

## Designation Process Generally

- Under CAA § 107(d), designations are established through cooperative process with the states.
  - For ozone, EPA has established the parameters of that process – including the information necessary to designate areas – in:
    - 40 CFR Part 50, Appendix U (promulgated with the 2015 ozone NAAQS): addressing monitoring data, and
    - EPA’s 2015 ozone designation guidance (issued Feb. 2016): addressing the analysis to determine nearby areas contributing to nonattainment.
- Not later than 1 year after NAAQS are promulgated, States provide designation recommendations.
  - States recommend both (1) designation status and (2) boundaries of the areas.
- EPA evaluates the state information.
  - If EPA intends to promulgate a designation different from a state’s recommendation (either status or boundaries), then the CAA requires EPA to:
    - notify the state at least 120 days prior to promulgating the final designation and
    - provide the state an opportunity to comment on the intended modification.
  - EPA usually fulfills this obligation through “120 day letters” to governors with accompanying Technical Support Documents (TSDs) for areas EPA intends to designate as nonattainment and an FR Notice.
    - Although required to send 120 day letters only to states with which we disagree with the recommendation and allow them to comment, we generally
      - send them to all states and
      - provide general public notice and comment (CAA § 107(d)(2)(B) provides that designation actions “shall not be subject to the [APA notice and comment] provisions, except nothing herein shall be construed as precluding such public notice and comment whenever possible”).
- Not later than 2 years after NAAQS are promulgated, EPA considers any information submitted by states and public comments and issues final designations.
  - The Administrator can extend the deadline by one year if there is “insufficient information to promulgate the designations” (CAA § 107(d)(1)(B)(i)).
  - At the time of final designations, EPA also issues final TSDs.
  - For ozone, at the time of final designations, areas are classified by operation of law based on a separate classification rule interpreting how the statutory classifications in CAA § 181(a)(1) will apply for the relevant NAAQS.
    - Classifications are marginal, moderate, serious, severe, and extreme, and are based on level of ozone pollution above the NAAQS with successively later attainment dates for each higher classification.
    - The classification rule needs to be issued no later than the date of the final designations.

## Ozone Extension Stay Response – Strawman schedule

July 14 – Briefing on procedural options moving forward

July 18 – Briefing on “insufficient information”

July 19 - Decision made on path forward

[4 days for staff-level drafting, seeking of additional information from management as needed, and review through mid-level management]

July 25 – To OAR IO/OGC IO for review (1 day, including incorporating comments into clean draft)

July 26 – To OP for review (1 day)

July 27 – To OEX for review (1 day)

### **July 28 – Signature**

July 31 – DOJ response to stay motion due\*

\*assumes a 7-day extension from our current response date (July 24).

## RECENT HISTORY OF 1-YEAR DESIGNATIONS EXTENSIONS

- **2012 PM<sub>2.5</sub> NAAQS:** The December 2014 designations deadline was extended until December 2015 for several areas of the country pending a review of state monitoring network data quality procedures. *See* 80 FR 2206 (January 15, 2015) and 80 FR 18535 (April 7, 2015). Specifically, PM<sub>2.5</sub> monitoring data for 2011 and 2012 from some areas in Georgia, and throughout the entire states of Tennessee and Florida were incomplete due to quality assurance failures. Complete data became available in the remaining areas of Georgia and most of Florida by the end of calendar year 2015, and in August 2016 the EPA issued designations for these areas. *See* 81 FR 61136 (September 6, 2016 – areas in GA and FL). Although past the statutory extension deadline, at the end of calendar year 2016 complete data became available for the state of Tennessee, and the EPA is currently preparing to issue the designations for this state in 2017. Once the Tennessee designations are finalized, there will remain only 5 counties in Florida that are undesignated for the 2012 PM<sub>2.5</sub> NAAQS.
- **2010 SO<sub>2</sub> NAAQS:** The June 2012 designations deadline was extended until June 2013 for the entire country by EPA due to “significant uncertainty,” citing the need to resolve the approach for SO<sub>2</sub> implementation, including a comprehensive SO<sub>2</sub> air quality assessment strategy. *See* 78 FR 47191 (August 5, 2013). In August 2013, the Administrator issued nonattainment designations for 29 areas where the existing SO<sub>2</sub> monitoring network indicated violations of the revised SO<sub>2</sub> NAAQS, and further deferred designations for the remainder of the country pending the EPA’s effort to finalize a comprehensive SO<sub>2</sub> air quality assessment strategy. Under the terms of a settlement to a deadline suit brought by environmental groups, the Administrator issued designations for 65 additional areas in 2016. *See* 81 FR 45039 (July 12, 2016) and 81 FR 89870 (December 13, 2016). Under the terms of the settlement, the Administrator is required to issue designations for most of the remainder of the U.S. by the end of 2017, and the remaining areas by the end of 2020.
- **2008 Lead NAAQS:** The October 2010, designations deadline was extended until October 2011, for most of the country to enable states to finish establishing a new network of lead monitors required for sources of lead emissions greater than 1 ton per year. *See* 75 FR 71033 (November 22, 2010). In October 2010, nonattainment designations were issued for 16 areas where the existing lead monitoring network indicated violations of the 2008 lead NAAQS. Designations were completed for all remaining areas of the U.S. in October 2011.<sup>1</sup> *See* 76 FR 72097 (November 22, 2011).
- **2008 Ozone NAAQS:** The March 2010 designations deadline was extended until March 2011 for the entire country because EPA announced in September 2009 an intention to reconsider the 0.075 ppm standard that had been established in 2008. *See* 75 FR 2936 (January 19, 2010). In that action, EPA stated that it had insufficient information to promulgate the designations because of the significant uncertainty that the reconsideration proposal created regarding the continued applicability of the 2008 ozone NAAQS. In September 2011, EPA announced that the reconsideration would not be completed, and implementation of the 2008 NAAQS would move forward. A deadline suit from public health and environmental groups followed, and litigants agreed to settle on a May 31, 2012, deadline. The Administrator issued ozone designations for the entire country in the spring of 2012. *See* 77 FR 30087 (May 21, 2012) and 77 FR 34221 (June 11, 2012). At the same time EPA issued the designations, EPA issued the rule establishing the method of classification for areas for the 2008 ozone NAAQS. *See* 77 FR 30160 (May 21, 2012).

<sup>1</sup> The form of the lead standard requires as few as 3 months of monitoring data in order to determine an area is out of compliance. States had established new monitoring networks starting in 2010 for sources of lead required by EPA regulations to be monitored. This allowed additional monitoring data to be gathered for calendar year 2010 and the beginning of 2011 to inform designations for the remainder of the country.

**To:** Bianco, Karen[Bianco.Karen@epa.gov]; Lipshultz, Jon (ENRD)[Jon.Lipshultz@usdoj.gov]  
**From:** Rave, Norman (ENRD)  
**Sent:** Wed 8/2/2017 10:52:05 PM  
**Subject:** RE: Signed - Ozone Extension Withdrawal

Thanks, Karen. I have sent it to Seth. I will check it against the motion in the morning. Norman

-----Original Message-----

From: Bianco, Karen [mailto:Bianco.Karen@epa.gov]  
Sent: Wednesday, August 2, 2017 6:12 PM  
To: Rave, Norman (ENRD) <NRave@ENRD.USDOJ.GOV>; Lipshultz, Jon (ENRD) <JLipshultz@ENRD.USDOJ.GOV>  
Subject: Re: Signed - Ozone Extension Withdrawal

This is slightly changed from the last draft you saw, so we should do one more cross check of the filing to ensure its consistent.

And this can go to Seth.

Sent from my iPhone

> On Aug 2, 2017, at 6:09 PM, Bianco, Karen <Bianco.Karen@epa.gov> wrote:  
>  
> Here it is.  
>  
> Sent from my iPhone  
>  
> Begin forwarded message:  
>  
> From: "Knapp, Kristien" <Knapp.Kristien@epa.gov<mailto:Knapp.Kristien@epa.gov>>  
> To: "Flynn, Mike" <Flynn.Mike@epa.gov<mailto:Flynn.Mike@epa.gov>>, "Jackson, Ryan" <jackson.ryan@epa.gov<mailto:jackson.ryan@epa.gov>>, "Bowman, Liz" <Bowman.Liz@epa.gov<mailto:Bowman.Liz@epa.gov>>, "Lyons, Troy" <lyons.troy@epa.gov<mailto:lyons.troy@epa.gov>>, "Dravis, Samantha" <dravis.samantha@epa.gov<mailto:dravis.samantha@epa.gov>>, "Graham, Amy" <graham.amy@epa.gov<mailto:graham.amy@epa.gov>>, "Bennett, Tate" <Bennett.Tate@epa.gov<mailto:Bennett.Tate@epa.gov>>, "Dunham, Sarah" <Dunham.Sarah@epa.gov<mailto:Dunham.Sarah@epa.gov>>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov<mailto:Gunasekara.Mandy@epa.gov>>, "Schwab, Justin" <schwab.justin@epa.gov<mailto:schwab.justin@epa.gov>>, "Bolen, Brittany" <bolen.brittany@epa.gov<mailto:bolen.brittany@epa.gov>>, "Reeder, John" <Reeder.John@epa.gov<mailto:Reeder.John@epa.gov>>, "Brown, Byron" <brown.byron@epa.gov<mailto:brown.byron@epa.gov>>  
> Cc: "Grantham, Nancy" <Grantham.Nancy@epa.gov<mailto:Grantham.Nancy@epa.gov>>, "Richardson, RobinH" <Richardson.RobinH@epa.gov<mailto:Richardson.RobinH@epa.gov>>, "Hull, George" <Hull.George@epa.gov<mailto:Hull.George@epa.gov>>, "Lewis, Josh" <Lewis.Josh@epa.gov<mailto:Lewis.Josh@epa.gov>>, "Burden, Susan" <Burden.Susan@epa.gov<mailto:Burden.Susan@epa.gov>>, "Owens, Nicole" <Owens.Nicole@epa.gov<mailto:Owens.Nicole@epa.gov>>, "Rees, Sarah" <rees.sarah@epa.gov<mailto:rees.sarah@epa.gov>>, "Smith, Kristi" <Smith.Kristi@epa.gov<mailto:Smith.Kristi@epa.gov>>, "Bianco, Karen" <Bianco.Karen@epa.gov<mailto:Bianco.Karen@epa.gov>>, "Nickerson, William" <Nickerson.William@epa.gov<mailto:Nickerson.William@epa.gov>>, "Curry, Bridgid" <Curry.Bridgid@epa.gov<mailto:Curry.Bridgid@epa.gov>>  
> Subject: Signed - Ozone Extension Withdrawal  
>



> A Federal Register notice announcing a withdrawal of the 1-year extension of the deadline for promulgating initial area designations for the ozone national ambient air quality standards was signed today. A copy of the signed notice is attached. Please let me know if you have any questions.

>

> Thanks,

> Kristien

>

> Kristien Knapp

> Special Assistant (OAR, OITA, OGC, OP)

> Office of the Administrator

> (202) 564-3277

> <Ozone Extension Withdrawal August 2 2017.pdf>

**To:** Bianco, Karen[Bianco.Karen@epa.gov]  
**Cc:** Lipshultz, Jon (ENRD)[Jon.Lipshultz@usdoj.gov]  
**From:** Rave, Norman (ENRD)  
**Sent:** Wed 8/2/2017 10:38:01 PM  
**Subject:** Re: Signed - Ozone Extension Withdrawal

I will send it to Seth. Thanks

> On Aug 2, 2017, at 6:11 PM, Bianco, Karen <Bianco.Karen@epa.gov> wrote:  
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>> To: "Flynn, Mike" <Flynn.Mike@epa.gov<mailto:Flynn.Mike@epa.gov>>, "Jackson, Ryan" <jackson.ryan@epa.gov<mailto:jackson.ryan@epa.gov>>, "Bowman, Liz" <Bowman.Liz@epa.gov<mailto:Bowman.Liz@epa.gov>>, "Lyons, Troy" <lyons.troy@epa.gov<mailto:lyons.troy@epa.gov>>, "Dravis, Samantha" <dravis.samantha@epa.gov<mailto:dravis.samantha@epa.gov>>, "Graham, Amy" <graham.amy@epa.gov<mailto:graham.amy@epa.gov>>, "Bennett, Tate" <Bennett.Tate@epa.gov<mailto:Bennett.Tate@epa.gov>>, "Dunham, Sarah" <Dunham.Sarah@epa.gov<mailto:Dunham.Sarah@epa.gov>>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov<mailto:Gunasekara.Mandy@epa.gov>>, "Schwab, Justin" <schwab.justin@epa.gov<mailto:schwab.justin@epa.gov>>, "Bolen, Brittany" <bolen.brittany@epa.gov<mailto:bolen.brittany@epa.gov>>, "Reeder, John" <Reeder.John@epa.gov<mailto:Reeder.John@epa.gov>>, "Brown, Byron" <brown.byron@epa.gov<mailto:brown.byron@epa.gov>>  
>> Cc: "Grantham, Nancy" <Grantham.Nancy@epa.gov<mailto:Grantham.Nancy@epa.gov>>, "Richardson, RobinH" <Richardson.RobinH@epa.gov<mailto:Richardson.RobinH@epa.gov>>, "Hull, George" <Hull.George@epa.gov<mailto:Hull.George@epa.gov>>, "Lewis, Josh" <Lewis.Josh@epa.gov<mailto:Lewis.Josh@epa.gov>>, "Burden, Susan" <Burden.Susan@epa.gov<mailto:Burden.Susan@epa.gov>>, "Owens, Nicole" <Owens.Nicole@epa.gov<mailto:Owens.Nicole@epa.gov>>, "Rees, Sarah" <rees.sarah@epa.gov<mailto:rees.sarah@epa.gov>>, "Smith, Kristi" <Smith.Kristi@epa.gov<mailto:Smith.Kristi@epa.gov>>, "Bianco, Karen" <Bianco.Karen@epa.gov<mailto:Bianco.Karen@epa.gov>>, "Nickerson, William" <Nickerson.William@epa.gov<mailto:Nickerson.William@epa.gov>>, "Curry, Bridgid" <Curry.Bridgid@epa.gov<mailto:Curry.Bridgid@epa.gov>>  
>> Subject: Signed - Ozone Extension Withdrawal  
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>> Thanks,  
>> Kristien  
>>  
>> Kristien Knapp  
>> Special Assistant (OAR, OITA, OGC, OP)  
>> Office of the Administrator  
>> (202) 564-3277  
>> <Ozone Extension Withdrawal August 2 2017.pdf>  
>

**To:** Bianco, Karen[Bianco.Karen@epa.gov]  
**Cc:** Smith, Kristi[Smith.Kristi@epa.gov]  
**From:** Schmidt, Lorie  
**Sent:** Wed 8/2/2017 10:22:55 PM  
**Subject:** Re: Signed - Ozone Extension Withdrawal

Yes

Sent from my iPhone

On Aug 2, 2017, at 6:00 PM, Bianco, Karen <Bianco.Karen@epa.gov> wrote:

This can go to petitioners now, yes?

Sent from my iPhone

Begin forwarded message:

From: "Knapp, Kristien" <Knapp.Kristien@epa.gov<mailto:Knapp.Kristien@epa.gov>>  
This To: "Flynn, Mike" <Flynn.Mike@epa.gov<mailto:Flynn.Mike@epa.gov>>, "Jackson, Ryan" <jackson.ryan@epa.gov<mailto:jackson.ryan@epa.gov>>, "Bowman, Liz" <Bowman.Liz@epa.gov<mailto:Bowman.Liz@epa.gov>>, "Lyons, Troy" <lyons.troy@epa.gov<mailto:lyons.troy@epa.gov>>, "Dravis, Samantha" <dravis.samantha@epa.gov<mailto:dravis.samantha@epa.gov>>, "Graham, Amy" <graham.amy@epa.gov<mailto:graham.amy@epa.gov>>, "Bennett, Tate" <Bennett.Tate@epa.gov<mailto:Bennett.Tate@epa.gov>>, "Dunham, Sarah" <Dunham.Sarah@epa.gov<mailto:Dunham.Sarah@epa.gov>>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov<mailto:Gunasekara.Mandy@epa.gov>>, "Schwab, Justin" <schwab.justin@epa.gov<mailto:schwab.justin@epa.gov>>, "Bolen, Brittany" <bolen.brittany@epa.gov<mailto:bolen.brittany@epa.gov>>, "Reeder, John" <Reeder.John@epa.gov<mailto:Reeder.John@epa.gov>>, "Brown, Byron" <brown.byron@epa.gov<mailto:brown.byron@epa.gov>>  
Cc: "Grantham, Nancy" <Grantham.Nancy@epa.gov<mailto:Grantham.Nancy@epa.gov>>, "Richardson, RobinH" <Richardson.RobinH@epa.gov<mailto:Richardson.RobinH@epa.gov>>, "Hull, George" <Hull.George@epa.gov<mailto:Hull.George@epa.gov>>, "Lewis, Josh" <Lewis.Josh@epa.gov<mailto:Lewis.Josh@epa.gov>>, "Burden, Susan" <Burden.Susan@epa.gov<mailto:Burden.Susan@epa.gov>>, "Owens, Nicole" <Owens.Nicole@epa.gov<mailto:Owens.Nicole@epa.gov>>, "Rees, Sarah" <rees.sarah@epa.gov<mailto:rees.sarah@epa.gov>>, "Smith, Kristi" <Smith.Kristi@epa.gov<mailto:Smith.Kristi@epa.gov>>, "Bianco, Karen" <Bianco.Karen@epa.gov<mailto:Bianco.Karen@epa.gov>>, "Nickerson, William" <Nickerson.William@epa.gov<mailto:Nickerson.William@epa.gov>>, "Curry, Bridgid" <Curry.Bridgid@epa.gov<mailto:Curry.Bridgid@epa.gov>>  
Subject: Signed - Ozone Extension Withdrawal

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Thanks,  
Kristien

Kristien Knapp  
Special Assistant (OAR, OITA, OGC, OP)  
Office of the Administrator  
(202) 564-3277

<Ozone Extension Withdrawal August 2 2017.pdf>

**To:** Smith, Kristi[Smith.Kristi@epa.gov]  
**Cc:** Baptist, Erik[baptist.erik@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Mills, Derek[Mills.Derek@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]  
**From:** Schwab, Justin  
**Sent:** Wed 8/2/2017 5:09:05 PM  
**Subject:** Re: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

Thank you.

Sent from my iPhone

On Aug 2, 2017, at 1:00 PM, Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)> wrote:

Justin –

I will read your message as not recusing yourself from the motion, which I think is right (since those others states aren't actually a party yet).

And thus Erik doesn't have to review and we will send to DOJ with the word "confusion" deleted.

- Kristi

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* [smith.kristi@epa.gov](mailto:smith.kristi@epa.gov) \* (202) 564-3068 \*

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

**From:** Schwab, Justin  
**Sent:** Wednesday, August 02, 2017 12:22 PM  
**To:** Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>  
**Cc:** Baptist, Erik <[baptist.erik@epa.gov](mailto:baptist.erik@epa.gov)>; Bianco, Karen <[Bianco.Karen@epa.gov](mailto:Bianco.Karen@epa.gov)>; Mills, Derek <[Mills.Derek@epa.gov](mailto:Mills.Derek@epa.gov)>; Schmidt, Lorie <[Schmidt.Lorie@epa.gov](mailto:Schmidt.Lorie@epa.gov)>

**Subject:** Re: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

**Importance:** High

I am recused from deliberations with regard to that motion to intervene but because they are not yet parties I am not sure whether I am still permitted to participate in the action itself.

To resolve uncertainty on that count, I am happy to let Erik handle the case for the time being.

Sent from my iPhone

On Aug 2, 2017, at 12:19 PM, Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)> wrote:

Erik -

My understanding is that Justin is now revised because of the states that are intervening on our behalf.

- Kristi

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \*  
Air & Radiation Law Office \* US EPA, Office of General Counsel  
\* [smith.kristi@epa.gov](mailto:smith.kristi@epa.gov) \* (202) 564-3068\*

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On Aug 2, 2017, at 12:01 PM, Baptist, Erik <[baptist.erik@epa.gov](mailto:baptist.erik@epa.gov)> wrote:

Karen,

I will defer to Justin on the motion and opposition. It is my understanding that he is not recused from this litigation.

**Erik Baptist**

Senior Deputy General Counsel

Office of General Counsel

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW

Washington, DC 20460

(202) 564-1689

[baptist.erik@epa.gov](mailto:baptist.erik@epa.gov)

**From:** Bianco, Karen

**Sent:** Wednesday, August 2, 2017 10:35 AM

**To:** Baptist, Erik <[baptist.erik@epa.gov](mailto:baptist.erik@epa.gov)>

**Cc:** Mills, Derek <[Mills.Derek@epa.gov](mailto:Mills.Derek@epa.gov)>; Smith, Kristi  
<[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>; Schmidt, Lorie <[Schmidt.Lorie@epa.gov](mailto:Schmidt.Lorie@epa.gov)>

**Subject:** 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

Attached is our motion to dismiss and opposition to petitioners' motion for summary vacatur or, in the alternative, for stay of our extension of the deadline for promulgating designations for the 2015 ozone NAAQS. In the motion, we move to dismiss the petition for review on grounds of mootness based on EPA's withdrawal of the extension. The draft is quite short and to the point.

DOJ is asking for edits by the end of today in order to file by tomorrow's deadline.



Karen Bennett Bianco <sup>3</sup> U.S. Environmental Protection Agency

Attorney-Adviser <sup>3</sup> Office of General Counsel <sup>3</sup> WJCN 7426X <sup>3</sup> 202-564-3298

**To:** Schwab, Justin[schwab.justin@epa.gov]  
**Cc:** Smith, Kristi[Smith.Kristi@epa.gov]; Baptist, Erik[baptist.erik@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Mills, Derek[Mills.Derek@epa.gov]  
**From:** Schmidt, Lorie  
**Sent:** Wed 8/2/2017 4:58:42 PM  
**Subject:** Re: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

Erik and Justin,

Can you please tell me who the OGC front office reviewer is for the motion? It sounds like it's Erik. Right? Do you both agree?

Lorie

On Aug 2, 2017, at 12:21 PM, Schwab, Justin <[schwab.justin@epa.gov](mailto:schwab.justin@epa.gov)> wrote:

I am recused from deliberations with regard to that motion to intervene but because they are not yet parties I am not sure whether I am still permitted to participate in the action itself.

To resolve uncertainty on that count, I am happy to let Erik handle the case for the time being.

Sent from my iPhone

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Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel  
\* [smith.kristi@epa.gov](mailto:smith.kristi@epa.gov) \* (202) 564-3068\*

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On Aug 2, 2017, at 12:01 PM, Baptist, Erik <[baptist.erik@epa.gov](mailto:baptist.erik@epa.gov)> wrote:

Karen,

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**Erik Baptist**

Senior Deputy General Counsel

Office of General Counsel

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW

Washington, DC 20460

(202) 564-1689

[baptist.erik@epa.gov](mailto:baptist.erik@epa.gov)

**From:** Bianco, Karen

**Sent:** Wednesday, August 2, 2017 10:35 AM

**To:** Baptist, Erik <[baptist.erik@epa.gov](mailto:baptist.erik@epa.gov)>

**Cc:** Mills, Derek <[Mills.Derek@epa.gov](mailto:Mills.Derek@epa.gov)>; Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>; Schmidt, Lorie <[Schmidt.Lorie@epa.gov](mailto:Schmidt.Lorie@epa.gov)>

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Attorney-Adviser <sup>3</sup> Office of General Counsel <sup>3</sup> WJCN 7426X <sup>3</sup> 202-564-3298

**To:** Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Mills, Derek  
**Sent:** Wed 8/2/2017 4:40:57 PM  
**Subject:** Re: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

He is not in his office.

Sent from my iPhone

On Aug 2, 2017, at 12:37 PM, Bianco, Karen <[Bianco.Karen@epa.gov](mailto:Bianco.Karen@epa.gov)> wrote:

If you could talk to Justin, that would be much appreciated.

**From:** Mills, Derek  
**Sent:** Wednesday, August 02, 2017 12:34 PM  
**To:** Bianco, Karen <[Bianco.Karen@epa.gov](mailto:Bianco.Karen@epa.gov)>  
**Subject:** RE: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

Anything I can do? I don't want to add to the confusion.

**From:** Bianco, Karen  
**Sent:** Wednesday, August 02, 2017 12:27 PM  
**To:** Mills, Derek <[Mills.Derek@epa.gov](mailto:Mills.Derek@epa.gov)>  
**Subject:** RE: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

I thought so, too, but his email from 12:22 is very confusing..

**From:** Mills, Derek  
**Sent:** Wednesday, August 02, 2017 12:20 PM  
**To:** Bianco, Karen <[Bianco.Karen@epa.gov](mailto:Bianco.Karen@epa.gov)>

**Subject:** RE: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

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**Subject:** FW: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

**Importance:** High

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**Sent:** Wednesday, August 02, 2017 12:01 PM

**To:** Bianco, Karen <[Bianco.Karen@epa.gov](mailto:Bianco.Karen@epa.gov)>

**Cc:** Mills, Derek <[Mills.Derek@epa.gov](mailto:Mills.Derek@epa.gov)>; Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>; Schmidt, Lorie <[Schmidt.Lorie@epa.gov](mailto:Schmidt.Lorie@epa.gov)>; Schwab, Justin <[schwab.justin@epa.gov](mailto:schwab.justin@epa.gov)>

**Subject:** RE: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

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I will defer to Justin on the motion and opposition. It is my understanding that he is not recused from this litigation.

**Erik Baptist**

Senior Deputy General Counsel

Office of General Counsel

U.S. Environmental Protection Agency

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Washington, DC 20460

(202) 564-1689

[baptist.erik@epa.gov](mailto:baptist.erik@epa.gov)

**From:** Bianco, Karen

**Sent:** Wednesday, August 2, 2017 10:35 AM

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Attorney-Adviser <sup>3</sup> Office of General Counsel <sup>3</sup> WJCN 7426X <sup>3</sup> 202-564-3298



**To:** Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Mills, Derek  
**Sent:** Wed 8/2/2017 4:38:31 PM  
**Subject:** RE: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

I'll let you know if I talk with him. Thanks.

**From:** Bianco, Karen  
**Sent:** Wednesday, August 02, 2017 12:37 PM  
**To:** Mills, Derek <Mills.Derek@epa.gov>  
**Subject:** RE: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

If you could talk to Justin, that would be much appreciated.

**From:** Mills, Derek  
**Sent:** Wednesday, August 02, 2017 12:34 PM  
**To:** Bianco, Karen <[Bianco.Karen@epa.gov](mailto:Bianco.Karen@epa.gov)>  
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**Cc:** Mills, Derek <[Mills.Derek@epa.gov](mailto:Mills.Derek@epa.gov)>; Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>; Schmidt, Lorie <[Schmidt.Lorie@epa.gov](mailto:Schmidt.Lorie@epa.gov)>

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Attorney-Adviser <sup>3</sup> Office of General Counsel <sup>3</sup> WJCN 7426X <sup>3</sup> 202-564-3298

**To:** Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Mills, Derek  
**Sent:** Wed 8/2/2017 4:34:22 PM  
**Subject:** RE: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

Anything I can do? I don't want to add to the confusion.

**From:** Bianco, Karen  
**Sent:** Wednesday, August 02, 2017 12:27 PM  
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**To:** Smith, Kristi[Smith.Kristi@epa.gov]  
**Cc:** Baptist, Erik[baptist.erik@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Mills, Derek[Mills.Derek@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]  
**From:** Schwab, Justin  
**Sent:** Wed 8/2/2017 4:21:32 PM  
**Subject:** Re: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

I am recused from deliberations with regard to that motion to intervene but because they are not yet parties I am not sure whether I am still permitted to participate in the action itself.

To resolve uncertainty on that count, I am happy to let Erik handle the case for the time being.

Sent from my iPhone

On Aug 2, 2017, at 12:19 PM, Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)> wrote:

Erik -

My understanding is that Justin is now revised because of the states that are intervening on our behalf.

- Kristi

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel  
\* [smith.kristi@epa.gov](mailto:smith.kristi@epa.gov) \* (202) 564-3068\*

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**From:** Smith, Kristi  
**Sent:** Wed 8/2/2017 4:19:53 PM  
**Subject:** Re: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

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Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* [smith.kristi@epa.gov](mailto:smith.kristi@epa.gov) \* (202) 564-3068\*

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**To:** Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Mills, Derek  
**Sent:** Wed 8/2/2017 3:10:56 PM  
**Subject:** RE: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

No worries. Thanks. I'll pass that along to Erik.

**From:** Bianco, Karen  
**Sent:** Wednesday, August 02, 2017 11:10 AM  
**To:** Mills, Derek <Mills.Derek@epa.gov>  
**Subject:** RE: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

Yes, sorry for not making that more clear. Lorie reviewed it and had no edits.

**From:** Mills, Derek  
**Sent:** Wednesday, August 02, 2017 11:06 AM  
**To:** Bianco, Karen <[Bianco.Karen@epa.gov](mailto:Bianco.Karen@epa.gov)>  
**Subject:** RE: 2015 ozone designation delay draft motion to dismiss and response to summary vacatur

This is for Erik, right? Lorie already reviewed? Thanks!

- Derek

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**To:** Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Rave, Norman (ENRD)  
**Sent:** Fri 7/28/2017 6:35:20 PM  
**Subject:** Revised draft motion  
ENV DEFENSE-#814165-v1-  
Ozone\_Designations\_Extension\_Mootness\_Motion\_w\_\_JL\_comments.DOCX

Karen, here is a revised version of the draft motion incorporating Jack's comments. Norman

**To:** Bianco, Karen[Bianco.Karen@epa.gov]; Lipshultz, Jon (ENRD)[Jon.Lipshultz@usdoj.gov]  
**From:** Rave, Norman (ENRD)  
**Sent:** Fri 7/28/2017 3:28:30 PM  
**Subject:** Ozone designations draft motion/opposition  
ENV DEFENSE-#813969-v1-Ozone Designation Extension Response to Motion.DOCX

Karen and Jack, here is a first cut at the motion to dismiss/opposition. I have kept it very short and simple. Please let me know your comments. Thanks, Norman

**To:** Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Rave, Norman (ENRD)  
**Sent:** Wed 7/12/2017 7:09:55 PM  
**Subject:** FW: American Lung Ass'n v. EPA, No. 17-1172 (D.C. Cir.)--Motion for summary vacatur or stay  
[Vol I Addendum.pdf](#)

Norman Rave

U.S. Dept. of Justice

Environmental Defense Section

P.O. Box 7611

Washington, D.C. 20044

(202) 616-7568

**From:** Seth Johnson [mailto:sjohnson@earthjustice.org]  
**Sent:** Wednesday, July 12, 2017 3:04 PM  
**To:** Lipshultz, Jon (ENRD) <JLipshultz@ENRD.USDOJ.GOV>  
**Cc:** Rave, Norman (ENRD) <NRave@ENRD.USDOJ.GOV>  
**Subject:** RE: American Lung Ass'n v. EPA, No. 17-1172 (D.C. Cir.)--Motion for summary vacatur or stay

Addendum email 1/3.

Seth

**From:** Seth Johnson  
**Sent:** Wednesday, July 12, 2017 3:03 PM  
**To:** Lipshultz, Jon (ENRD)  
**Cc:** 'Rave, Norman (ENRD)'  
**Subject:** American Lung Ass'n v. EPA, No. 17-1172 (D.C. Cir.)--Motion for summary vacatur or stay

Jack & Norman,

Attached please find the motion we just filed in the above-captioned case, which we also just filed today. For convenience, I also attach a scan of the court-stamped petition for review.

There is a sizable addendum accompanying the motion, so this email will be followed by 3 others. (In ECF, it's all one PDF file, but that was too big to email. The substance is identical.)

This email is to effectuate service of the motion on EPA.

Best,

Seth

Seth Johnson

Staff Attorney

Earthjustice Washington, DC, Office

1625 Massachusetts Ave., NW, Ste. 702

Washington, DC 20036

T: 202.667.4500 x5245 or 202.797.5245

F: 202.667.2356

[earthjustice.org](http://earthjustice.org)



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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Case No. 17-1172

ED\_001732\_00000065-00001

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**ORAL ARGUMENT NOT YET SCHEDULED**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

AMERICAN LUNG ASSOCIATION, )

*et al.*, )

*Petitioners*, )

v. )

U.S. ENVIRONMENTAL )

PROTECTION AGENCY, *et al.*, )

*Respondents*. )

---

Case No. 17-1172

**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

Pursuant to D.C. Circuit Rule 27(a)(4), American Lung Association, American Public Health Association, American Thoracic Society, Clean Air Council, Environmental Defense Fund, Environmental Law and Policy Center, National Parks Conservation Association, Natural Resources Defense Council, Ohio Environmental Council, Physicians For Social Responsibility, Sierra Club, and West Harlem Environmental Action (collectively, “Movants”) submit this certificate as to parties, rulings, and related cases.

**(A) Parties and *Amici***

**(i) Parties, Intervenor, and *Amici* Who Appeared in the District Court**

This case is a petition for review of final agency action, not an appeal from the ruling of a district court.

**(ii) Parties to This Case**

Petitioners:

The petitioners in the above-captioned case are American Lung Association, American Public Health Association, American Thoracic Society, Clean Air Council, Environmental Defense Fund, Environmental Law and Policy Center, National Parks Conservation Association, Natural Resources Defense Council, Ohio Environmental Council, Physicians For Social Responsibility, Sierra Club, and West Harlem Environmental Action

Respondents:

The respondents in the above-captioned case are the United States Environmental Protection Agency (“EPA”) and Scott Pruitt, in his official capacity as Administrator of the EPA.

Intervenors:

None at present.

**(iii) *Amici* in This Case**

None at present.

**(iv) Circuit Rule 26.1 Disclosures**

See Petitioners’ disclosure form filed accompanying the Petition for Review.

## **(B) Rulings Under Review**

Petitioners seek review of the final action taken by EPA extending the deadline for promulgating initial area designations for the 2015 ozone national ambient air quality standards, which EPA announced in a Federal Register notice published at 82 FR 29,246 (June 28, 2017) and titled “Extension of Deadline for Promulgating Designations for the 2015 Ozone National Ambient Air Quality Standards” and in letters to state governors dated June 6, 2017, examples of which were attached to the Petition for Review as Attachments B and C.

## **(C) Related Cases**

Movants are not aware of any related cases.

DATED: July 12, 2017

Respectfully submitted,

/s/Ann Brewster Weeks (w/permission)

Ann Brewster Weeks  
Clean Air Task Force  
18 Tremont St., Ste. 530  
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*Counsel for Clean Air Council and  
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/s/Seth L. Johnson

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*Counsel for American Lung  
Association, American Public Health  
Association, American Thoracic  
Society, National Parks Conservation  
Association, Natural Resources*



*Defense Council, Physicians for Social  
Responsibility, Sierra Club, and West  
Harlem Environmental Action*

/s/Scott Strand (w/permission)

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/s/Sean H. Donahue (w/permission)

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gmccahan@edf.org  
rfullmer@edf.org

*Counsel for Environmental Defense  
Fund*

# Exhibit 1

withdrawn or denied. The proceeds of any such fees will be used to pay the remaining portion of the Agency's cost of providing credit assistance and the costs of retaining expert firms, including financial, engineering, and legal services, in the field of municipal and project finance, to assist in the underwriting of the Federal credit instrument. All of, or a portion of, this fee may be waived.

(d) *Servicing fee.* EPA will require borrowers to pay a servicing fee for each credit instrument approved for funding. Separate fees may apply for each type of credit instrument (e.g., a loan guarantee, a secured loan with a single disbursement, or a secured loan with multiple disbursements), depending on the costs of servicing the credit instrument as determined by the Administrator. Such fees will be set at a level sufficient to enable the EPA to recover all or a portion of the costs to the Federal Government of servicing WIFIA credit instruments.

(e) *Optional supplemental fee.* If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under WIFIA, EPA and the approved applicant may agree upon a supplemental fee to be paid by or on behalf of the approved applicant at the time of execution of the term sheet to reduce the subsidy cost of that project. No such fee may be included among eligible project costs.

(f) *Reduced fees.* To the extent that Congress appropriates funds in any given year beyond those sufficient to cover internal administrative costs, EPA may utilize such appropriated funds to reduce fees that would otherwise be charged under paragraph (c) of this section.

(g) *Extraordinary expenses.* EPA may require payment in full by the borrower of additional fees, in an amount determined by EPA, and of related fees and expenses of its independent consultants and outside counsel, to the extent that such fees and expenses are incurred directly by EPA and to the extent such third parties are not paid directly by the borrower, in the event that a borrower experiences difficulty relating to technical, financial, or legal matters or other events (e.g., engineering failure or financial workouts) which require EPA to incur time or expenses beyond standard monitoring.

[FR Doc. 2017-13438 Filed 6-27-17; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR PART 81

[EPA-HQ-OAR-2017-0223; FRL-9964-37-OAR]

#### Extension of Deadline for Promulgating Designations for the 2015 Ozone National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Extension of deadline for promulgating designations.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing that it is using its authority under the Clean Air Act (CAA) to extend by 1 year the deadline for promulgating initial area designations for the ozone national ambient air quality standards (NAAQS) that were promulgated in October 2015. The new deadline is October 1, 2018.

**DATES:** The deadline for the EPA to promulgate initial designations for the 2015 ozone NAAQS is October 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding this action, contact Denise Scott, Air Quality Planning Division, Office of Air Quality Planning and Standards, Mail Code C539-04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-4208; email address: [scott.denise@epa.gov](mailto:scott.denise@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

Entities potentially affected by this action include state, local and tribal governments that would participate in the initial area designation process for the 2015 ozone standards.

###### B. Where can I get a copy of this document and other related information?

The EPA has established a docket for designations for the 2015 ozone NAAQS under Docket ID No. EPA-HQ-OAR-2017-0223. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

An electronic copy of this notice is also available at <http://www.epa.gov/ozone-designations> along with other information related to designations for the 2015 ozone NAAQS.

##### II. Designations Requirements

On October 1, 2015, the EPA signed a notice of final rulemaking that revised the 8-hour primary and secondary ozone NAAQS (80 FR 65292; October 26, 2015). The primary standard was lowered from 0.075 parts per million (ppm) to a level of 0.070 ppm. The EPA also revised the secondary standard by making it identical in all respects to the revised primary standard. (The previous ozone NAAQS were set in 2008 and remain effective.)

After the EPA establishes or revises a NAAQS pursuant to CAA section 109, the CAA directs the EPA and the states to begin taking steps to ensure that those NAAQS are met. The first step is to identify areas of the country that do not meet the new or revised NAAQS. This step is known as the initial area designations. Section 107(d)(1)(A) of the CAA provides that, "By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised national ambient air quality standard for any pollutant under section [109], the Governor of each State shall \* \* \* submit to the Administrator a list of all areas (or portions thereof) in the State" that designates those areas as nonattainment, attainment, or unclassifiable. The CAA defines an area as nonattainment if it is violating the NAAQS or if it is contributing to a violation in a nearby area. 42 U.S.C. 7407(d)(1)(A)(i).

The CAA further provides, "Upon promulgation or revision of a national ambient air quality standard, the Administrator shall promulgate the designations of all areas (or portions thereof) \* \* \* as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised national ambient air quality standard. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the

designations.” 42 U.S.C. 7407(d)(1)(B)(i).

After the states submit their recommendations, but no later than 120 days prior to promulgating designations, the EPA is required to notify a state of any intended modifications to the state’s recommended designation. The state then has an opportunity to demonstrate why any proposed modification is inappropriate. Whether or not a state provides a recommendation, the EPA must promulgate the designation that the agency deems appropriate within 2 years of promulgation of the NAAQS (or within 3 years if the EPA extends the deadline).

For the 2015 ozone NAAQS, the deadline for states to submit designation recommendations to the EPA for their areas was October 1, 2016. The EPA has been evaluating these recommendations and conducting additional analyses to determine whether it is necessary to modify any of the state recommendations.

### III. Extension of Deadline for Promulgating Designations for the 2015 NAAQS

In this action, the EPA is announcing that it is using its authority under

section 107(d)(1)(B)(i) of the CAA to extend by 1 year the deadline for promulgating initial area designations for the 2015 ozone NAAQS. The new deadline is October 1, 2018. For the reasons explained in this notice, the EPA Administrator has determined that there is insufficient information to complete the designations by October 1, 2017.

Following the recent change in administrations, the agency is currently evaluating a host of complex issues regarding the 2015 ozone NAAQS and its implementation, such as understanding the role of background ozone levels and appropriately accounting for international transport. The Administrator has determined that he cannot assess whether he has the necessary information to finalize designations until additional analyses from this evaluation are available. In addition, pursuant to language in the recently-enacted Fiscal Year 2017 omnibus bill, the Administrator is establishing an Ozone Cooperative Compliance Task Force to develop additional flexibilities for states to comply with the ozone standard. It is possible the outcome of that effort could identify flexibilities that could impact

the designations process. In light of the analyses currently underway at the agency, the Administrator has determined he needs additional time to consider completely all designation recommendations provided by state governors pursuant to CAA section 107(d)(1)(A), including full consideration of exceptional events impacting designations, and determine whether they provide sufficient information to finalize designations. We also note that new agency officials are currently reviewing the 2015 ozone NAAQS rule. The Administrator has determined that in light of the uncertainty of the outcome of that review, there is insufficient information to promulgate designations by October 1, 2017.

### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 21, 2017.

**E. Scott Pruitt,**  
*Administrator.*

[FR Doc. 2017–13437 Filed 6–27–17; 8:45 am]

BILLING CODE 6560–50–P

# Exhibit 2



**E. SCOTT PRUITT**  
**ADMINISTRATOR**

June 6, 2017

The Honorable Doug Ducey  
Governor of Arizona  
State Capitol  
1700 W. Washington Street  
Phoenix, AZ 85007

Dear Governor Ducey:

I am writing to update you on the status of the U.S. Environmental Protection Agency's efforts related to the National Ambient Air Quality Standards (NAAQS) for ozone promulgated in October 2015. Pursuant to section 107(d)(1)(B) of the Clean Air Act (CAA), I am extending the deadline for promulgating initial area designations for the 2015 ozone NAAQS by one year. I have determined that there is insufficient information, and taking additional time is appropriate in order to consider completely all designation recommendations provided by state governors pursuant to CAA section 107(d)(1)(A) and to rely fully on the most recent air quality data. This additional time will also provide the Agency time to complete its review of the 2015 ozone NAAQS, prior to taking this initial implementation step.

Although the new ozone standard was set on October 1, 2015, there remains a host of complex issues that could undermine associated compliance efforts by states, localities and regulated entities. As part of the review process, the Agency is evaluating these issues primarily focusing on: fully understanding the role of background ozone levels; appropriately accounting for international transport; and, timely consideration of exceptional events demonstrations. Additionally, pursuant to language in the recently-enacted FY 2017 omnibus bill, I have established an Ozone Cooperative Compliance Task Force to develop additional flexibilities for states to comply with the ozone standard.

States have made tremendous progress and significant investment cleaning up the air. Since 1980, total emissions of the six principal air pollutants have dropped by 63 percent and ozone levels have declined by 33 percent. Despite the continued improvement of air quality, costs associated with compliance of the ozone NAAQS have significantly increased. I am committed to working with you and your local officials to effectively implement the ozone standard in a manner that is supportive of your air quality improvement efforts, without interfering with local decisions or impeding economic growth.

I appreciate the information you and your staff have shared with EPA already as part of this process. I am confident this progress will continue as we work together towards our shared goal of clean air, a robust economy and stronger, healthier communities. If you have questions or concerns, please contact me or your staff may contact Troy Lyons, Associate Administrator for the Office of Congressional and Intergovernmental Relations, at [lyons.troy@epa.gov](mailto:lyons.troy@epa.gov) or (202) 564-4987.

Respectfully yours,



E. Scott Pruitt

# Exhibit 3





E. SCOTT PRUITT  
ADMINISTRATOR

June 6, 2017

The Honorable Dan Malloy  
Governor of Connecticut  
210 Capitol Avenue  
Hartford, Connecticut 06106

Dear Governor Malloy:

I am writing to update you on the status of the U.S. Environmental Protection Agency's efforts related to the National Ambient Air Quality Standards (NAAQS) for ozone promulgated in October 2015. Pursuant to section 107(d)(1)(B) of the Clean Air Act (CAA), I am extending the deadline for promulgating initial area designations for the 2015 ozone NAAQS by one year. I have determined that there is insufficient information, and taking additional time is appropriate in order to consider completely all designation recommendations provided by state governors pursuant to CAA section 107(d)(1)(A) and to rely fully on the most recent air quality data. This additional time will also provide the Agency time to complete its review of the 2015 ozone NAAQS, prior to taking this initial implementation step.

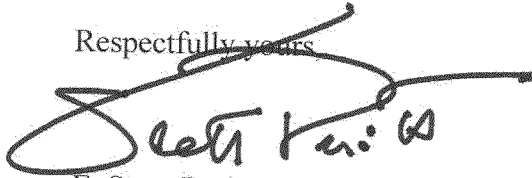
Although the new ozone standard was set on October 1, 2015, there remains a host of complex issues that could undermine associated compliance efforts by states, localities and regulated entities. As part of the review process, the Agency is evaluating these issues primarily focusing on: fully understanding the role of background ozone levels; appropriately accounting for international transport; and, timely consideration of exceptional events demonstrations. Additionally, pursuant to language in the recently-enacted FY 2017 omnibus bill, I have established an Ozone Cooperative Compliance Task Force to develop additional flexibilities for states to comply with the ozone standard.

States have made tremendous progress and significant investment cleaning up the air. Since 1980, total emissions of the six principal air pollutants have dropped by 63 percent and ozone levels have declined by 33 percent. Despite the continued improvement of air quality, costs associated with compliance of the ozone NAAQS have significantly increased. I am committed to working with you and your local officials to effectively implement the ozone standard in a manner that is supportive of your air quality improvement efforts, without interfering with local decisions or impeding economic growth.



I appreciate the information you and your staff have shared with EPA already as part of this process. I am confident this progress will continue as we work together towards our shared goal of clean air, a robust economy and stronger, healthier communities. If you have questions or concerns, please contact me or your staff may contact Troy Lyons, Associate Administrator for the Office of Congressional and Intergovernmental Relations, at [lyons.troy@epa.gov](mailto:lyons.troy@epa.gov) or (202) 564-4987.

Respectfully yours

A handwritten signature in black ink, appearing to read "Scott Pruitt", with a large, stylized flourish extending from the end of the signature.

E. Scott Pruitt

# Exhibit 4



E. SCOTT PRUITT  
ADMINISTRATOR

June 6, 2017

The Honorable John Carney  
Governor of Delaware  
Legislative Hall  
Dover, Delaware 19901

Dear Governor Carney:

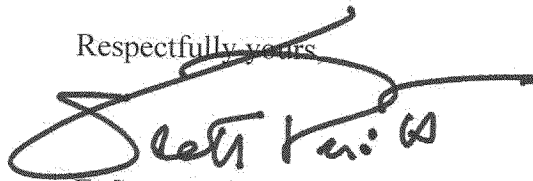
I am writing to update you on the status of the U.S. Environmental Protection Agency's efforts related to the National Ambient Air Quality Standards (NAAQS) for ozone promulgated in October 2015. Pursuant to section 107(d)(1)(B) of the Clean Air Act (CAA), I am extending the deadline for promulgating initial area designations for the 2015 ozone NAAQS by one year. I have determined that there is insufficient information, and taking additional time is appropriate in order to consider completely all designation recommendations provided by state governors pursuant to CAA section 107(d)(1)(A) and to rely fully on the most recent air quality data. This additional time will also provide the Agency time to complete its review of the 2015 ozone NAAQS, prior to taking this initial implementation step.

Although the new ozone standard was set on October 1, 2015, there remains a host of complex issues that could undermine associated compliance efforts by states, localities and regulated entities. As part of the review process, the Agency is evaluating these issues primarily focusing on: fully understanding the role of background ozone levels; appropriately accounting for international transport; and, timely consideration of exceptional events demonstrations. Additionally, pursuant to language in the recently-enacted FY 2017 omnibus bill, I have established an Ozone Cooperative Compliance Task Force to develop additional flexibilities for states to comply with the ozone standard.

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I appreciate the information you and your staff have shared with EPA already as part of this process. I am confident this progress will continue as we work together towards our shared goal of clean air, a robust economy and stronger, healthier communities. If you have questions or concerns, please contact me or your staff may contact Troy Lyons, Associate Administrator for the Office of Congressional and Intergovernmental Relations, at [lyons.troy@epa.gov](mailto:lyons.troy@epa.gov) or (202) 564-4987.

Respectfully yours

A handwritten signature in black ink, appearing to read "Scott Pruitt", with a large, sweeping flourish extending from the end of the signature.

E. Scott Pruitt

# Exhibit 5



E. SCOTT PRUITT  
ADMINISTRATOR

June 6, 2017

The Honorable Andrew Cuomo  
Governor of New York  
State Capitol  
Albany, New York 12224

Dear Governor Cuomo:

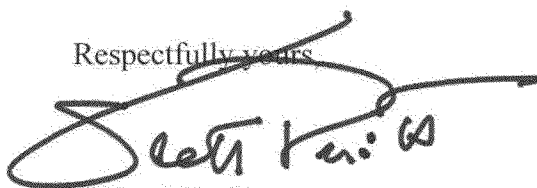
I am writing to update you on the status of the U.S. Environmental Protection Agency's efforts related to the National Ambient Air Quality Standards (NAAQS) for ozone promulgated in October 2015. Pursuant to section 107(d)(1)(B) of the Clean Air Act (CAA), I am extending the deadline for promulgating initial area designations for the 2015 ozone NAAQS by one year. I have determined that there is insufficient information, and taking additional time is appropriate in order to consider completely all designation recommendations provided by state governors pursuant to CAA section 107(d)(1)(A) and to rely fully on the most recent air quality data. This additional time will also provide the Agency time to complete its review of the 2015 ozone NAAQS, prior to taking this initial implementation step.

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I appreciate the information you and your staff have shared with EPA already as part of this process. I am confident this progress will continue as we work together towards our shared goal of clean air, a robust economy and stronger, healthier communities. If you have questions or concerns, please contact me or your staff may contact Troy Lyons, Associate Administrator for the Office of Congressional and Intergovernmental Relations, at [lyons.troy@epa.gov](mailto:lyons.troy@epa.gov) or (202) 564-4987.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Scott Pruitt", with a large, sweeping flourish extending from the end of the signature.

E. Scott Pruitt



# Exhibit 6



## Administrator Extends Deadline for Area Designations for 2015 Ozone Standards

In a letter to Governors, Administrator Pruitt extended by one year the deadline for promulgating initial areas designations for the 2015 ozone National Ambient Air Quality Standards. A sample letter is attached here.

You may need Adobe Reader to view files on this page. See EPA's [About PDF page](#) to learn more.

- [Letter to Governor Doug Ducey, AZ \(PDF\)](#) (2 pp, 349 K, 06/06/2017)

LAST UPDATED ON JUNE 7, 2017

# Exhibit 7



## News Releases from Headquarters

# EPA to Extend Deadline for 2015 Ozone NAAQS Area Designations

06/06/2017

### Contact Information:

U.S. EPA Office of Media Relations ([press@epa.gov](mailto:press@epa.gov))

WASHINGTON – U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt sent a letter to governors today to inform them of EPA’s efforts related to the National Ambient Air Quality Standards (NAAQS) for ozone promulgated in October 2015. EPA is extending the deadline for promulgating initial area designations, by one year, for the 2015 ozone NAAQS.

“States have made tremendous progress and significant investment cleaning up the air. We will continue to work with states to ensure they are on a path to compliance,” said Administrator Scott Pruitt.

The National Ambient Air Quality Standard (NAAQS) for ground-level ozone is an outdoor air regulation under the Clean Air Act. As part of the process to determine what areas of the country are able to meet the current air quality standards, states are currently submitting their proposals for area designations under the 70 parts per billion (ppb) standard, which was lowered from 75 ppb in 2015. Areas designated as being in “nonattainment” of the standard face consequences, including: increased regulatory burdens, restrictions on infrastructure investment, and increased costs to businesses.

EPA is giving states more time to develop air quality plans and EPA is looking at providing greater flexibility to states as they develop their plans. And, pursuant to the language in the recently-enacted FY2017 Omnibus funding bill, Administrator Pruitt is establishing an Ozone Cooperative Compliance Task Force to develop additional flexibilities for states to comply with the ozone standard.

Additionally, the Agency is taking time to better understand some lingering, complicated issues so that air attainment decisions can be based on the latest and greatest information. This additional time will also provide the agency time to review the 2015 ozone NAAQS, prior to taking this initial implementation step.

Although the new ozone standard was set on October 1, 2015, there remains a host of complex issues that could undermine associated compliance efforts by states and localities. The Agency is evaluating these issues, primarily focused on:

- Fully understanding the role of background ozone levels;

- Appropriately accounting for international transport,
- And, timely consideration of exceptional events demonstrations.

“We share the goal of clean air, a robust economy and stronger, healthier communities. We are committed to working with states and local officials to effectively implement the ozone standard in a manner that is supportive of air quality improvement efforts without interfering with local decisions or impeding economic growth,” said Administrator Pruitt.

Since 1980, total emissions of the six principal air pollutants have dropped by 63 percent and ozone levels have declined by 33 percent. Despite the continued improvement of air quality, costs associated with compliance of the ozone NAAQS have significantly increased.

Read the letter sent to governors: <https://www.epa.gov/ozone-designations/administrator-extends-deadline-area-designations-2015-ozone-standards>

Visit ozone designations page: <https://www.epa.gov/ozone-designations>

R107

LAST UPDATED ON JUNE 7, 2017

# Exhibit 8



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

MAY 30 2017

OFFICE OF THE  
REGIONAL ADMINISTRATOR

Ms. Charlene Albee, Director  
Washoe County Health District  
Air Quality Management Division  
1001 East 9<sup>th</sup> Street, Building B  
Reno, NV 89512

Dear Ms. Albee:

I am pleased to concur with your determination that six exceedances of the 2015 8-hour ozone (O<sub>3</sub>) National Ambient Air Quality Standard (NAAQS) at the Reno3 monitor meet the criteria for an exceptional event in the Exceptional Events Rule (EER).


The Washoe County Health District's submittals, dated November 10, 2016 and April 14, 2017, included documentation that the exceedances on August 18, 19, and 21, 2015, and July 2-4, 2016 were caused by exceptional events due to wildfire emissions. After thoroughly reviewing the information you provided, we agree that your submittals meet the demonstration criteria and the schedule and procedural requirements in the EER.

The basis for our concurrence is set forth in the enclosed technical support documents. My staff will enter concurrence flags for these data into EPA's Air Quality System (AQS) database. With EPA's concurrence on the six days, the 2016 design value for the Reno3 monitor (AQS ID: 32-031-0016) does not violate the 2015 8-hour O<sub>3</sub> NAAQS.

EPA's concurrence is a preliminary step in the regulatory process for actions that may rely on these data and does not constitute final Agency action. If EPA completes a notice-and-comment rulemaking for an action that is influenced by the exclusion of the O<sub>3</sub> data specified in this concurrence, EPA's concurrence letter and accompanying technical support documents would be included in the record as part of the technical basis for the proposed action. If we receive comments, we must consider and respond to those comments before taking final regulatory action. When EPA issues that regulatory action, it is a final Agency action subject to judicial review.

If you have any questions or wish to discuss this matter further, please contact Elizabeth Adams, Acting Director of the Air Division, at (415) 972-3183.

Sincerely,

  
Alexis Strauss  
Acting Regional Administrator

Enclosures

cc (via email): Danilo Dragoni, Nevada Division of Environmental Protection  
Daniel Inouye, Washoe County Health District

# Exhibit 9





**Dannel P. Malloy**

GOVERNOR  
STATE OF CONNECTICUT

June 20, 2017

The Honorable E. Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Ave, NW  
Mail Code: 1101A  
Washington, DC 20460

**RE: Objection to Delay of Designations for the 2015 Ozone Standard**

Dear Administrator Pruitt:

I am dismayed by your June 6th letter announcing a delay in implementation of the designation phase of the 2015 ozone National Ambient Air Quality Standards (NAAQS). Your decision is deeply troubling because it will postpone important progress to improve air quality in my home state of Connecticut, as well as states across the nation.

Pushing back the timeframe for putting in place this new, more stringent standard prolongs the risk of illness – and even death – for thousands of residents in my state who are most sensitive to unhealthy levels of ozone in our air. In addition to placing our health at risk, delay in addressing high ozone levels created by the interstate transport of air pollution from upwind states to Connecticut undermines our economy. Finally, your purported rationale for this deferral has little—if any—basis in law or fact.

**Delay puts the health of Americans at risk**

Noticeably absent from your letter is any mention of protection of public health – but your own science and our experience here in Connecticut demonstrate that there are real human costs to postponing the implementation of better standards. Your decision to extend the Environmental Protection Agency's (EPA's) deadline for promulgating initial area designations under the 2015 ozone NAAQS by a full year will push back long-awaited remedial actions required to clean the air Connecticut residents breathe every hour of every day. Your action is the latest evidence of EPA's failure to address ozone levels and to require all states to limit the discharge of air pollution within their borders.

Here in Connecticut we take this issue seriously. As you may recall, during this past winter's convening of the National Governors Association, I presented you with the fact that my state is already designated nonattainment for ozone and that we measure the highest levels of ozone in the Northeast. This is, however, through no fault of our own. More than 90% of this pollution blows into our state from other places. In fact, on some days, every power plant and factory in our state could shut down and Connecticut would still exceed the ozone NAAQS.

This point is worthy of repetition—if every power plant and factory within the boundaries of our state ceased operations, our air would still exceed the ozone NAAQS because of air pollution created in *other* states.

This is not fair to the people of Connecticut and it puts the health of our population at severe risk. We urge you to move faster – not slower – to implement the 2015 ozone standard so that concentrations of pollution in our air will be less of a threat to our residents.

High ozone levels have been directly linked to illnesses such as asthma, and in Connecticut, children, women, Hispanics, blacks, and residents of Connecticut's five largest cities are disproportionately affected by this condition. Connecticut is above the national average in asthma sufferers, and in 2014, Connecticut incurred over \$135 million in acute care charges due to asthma.

### **Delay hurts the state economy**

Your letter also talks about not wanting to “imped[e] economic growth.” But delay means that Connecticut – a state where extensive investments have been made to limit pollution – will remain at a competitive economic disadvantage against states that ignore critical air quality issues in an effort to maintain a low-cost environment for their businesses.

In a nonattainment area, industries face additional administrative and air pollution control costs when applying for a new permit or expanding their business. Industries in our state are required to install the most stringent emissions controls in the country when building a plant, and must purchase pollution credits to offset new emissions. This can add millions of dollars to the cost of doing business.

The cost of removing additional pollution in Connecticut, where we already have stringent requirements in place, is estimated at \$10,000 to \$40,000 per ton. Compare this to the estimated cost of as little as \$500 to \$1,200 per ton it takes to remove the same amount of pollution in upwind states, where even some basic control technologies have not been installed at various facilities.

### **Delay contradicts the facts**

Your argument for the delay is weak and unjustified. Contrary to claims in your June 6 letter, the EPA has all of the information and authority it needs to act.

Specifically, ambient ozone concentrations measured by over 1,100 monitoring stations located throughout the country were certified and submitted to EPA by May 1, 2016. States submitted

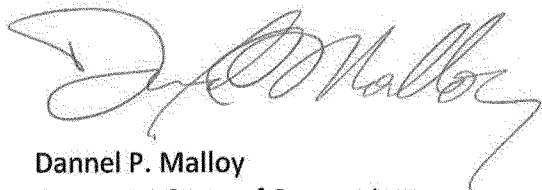
their designation recommendations as required by the October 2016 deadline. There is nothing missing from past information used by EPA to designate areas after previous revisions to the ozone NAAQS. Your agency is currently in possession of all the necessary information to promulgate the required initial designations immediately.

The other factors cited in your letter – background ozone levels, international transport, and exceptional event demonstrations – are immaterial to the initial area designations, but instead are considerations for the next phase—the implementation phase. In fact, Congress addressed these matters through separate provisions distinctly different from area designation requirements,<sup>1</sup> which provide EPA adequate flexibility to address the implementation considerations without delaying the significant public health benefits that your own Regulatory Impact Analysis shows greatly outweigh the costs of implementation.<sup>2</sup>

For the sake of public health and economic fairness, I urge you to reconsider the unnecessary one-year extension and to promulgate initial attainment and nonattainment designations under the 2015 ozone NAAQS as required by CAA section 107(d)(1)(B), and finalize the implementation rule proposed on November 16, 2016.

Connecticut looks forward to working with EPA to achieve our shared air quality goals while also ensuring that the necessary emissions reductions are secured in an equitable manner from contributing states.

Sincerely,



Dannel P. Malloy  
Governor, State of Connecticut

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<sup>1</sup> Specifically, Clean Air Act section 179B related to international transport, and section 182(h) related to rural transport areas, apply to state implementation plans or revisions that are due after an area's designation. Section 179B has in fact already been successfully applied by Texas to address international transport after the El Paso area was designated nonattainment. See "Approval and Promulgation of Implementation Plans for Texas; Approval of Section 179B Demonstration of Attainment, Volatile Organic Compounds and Nitrogen Oxides Motor Vehicle Emissions Budgets for Conformity for the El Paso Ozone Nonattainment Area." 69 Federal Register 32450-32454 (June 10, 2004).

<sup>2</sup> See EPA-452/R-15-007; September 2015. The Regulatory Impact Analysis concludes that the revised standard will avoid 320-660 premature deaths annually and provide important benefits for those with asthma and chronic lung disease, avoiding 230,000 asthma attacks, 160,000 lost school days, and 28,000 missed work days each year. Overall, EPA estimates annual benefits of \$2.9-\$5.9 billion, outweighing estimated annual costs of \$1.4 billion. The one-year designation delay will unnecessarily cause substantial health and economic damages while needlessly deferring benefits. These are EPA's national estimates (excluding California) for 2025.

# Exhibit 10



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 25 2015

OFFICE OF  
AIR AND RADIATION

**MEMORANDUM**

**SUBJECT:** Area Designations for the 2015 Ozone National Ambient Air Quality Standards

**FROM:** Janet G. McCabe *JGM*  
Acting Assistant Administrator

**TO:** Regional Administrators  
Regions 1-10

The purpose of this guidance is to provide information on the schedule and process for initially designating areas for the purpose of implementing the 2015 primary and secondary ozone national ambient air quality standards (NAAQS). In addition, this memorandum identifies important factors that the Environmental Protection Agency intends to evaluate in making final nonattainment area boundary decisions for these standards. The EPA recommends that states and tribes also consider these factors in making their recommendations for area designations and nonattainment area boundaries. As for designations for prior ozone NAAQS, the EPA will also consider any other relevant information in making designation determinations. Please share this memorandum with state and tribal air agencies in your region.

On October 1, 2015, the EPA promulgated revised primary and secondary ozone NAAQS (80 FR 65292, October 26, 2015). In that action, the EPA strengthened both standards to a level of 0.070 parts per million, while retaining their indicators, averaging times, and forms. The EPA revised the ozone standards based on an integrated assessment of an extensive body of new scientific evidence, which substantially strengthens our knowledge regarding ozone-related health and welfare effects, the results of exposure and risk analyses, the advice of the Clean Air Scientific Advisory Committee, and consideration of public comments.

The revised primary standard provides increased protection for children, older adults, and people with asthma or other lung diseases, and other at-risk populations against an array of adverse health effects including reduced lung function, increased respiratory symptoms and pulmonary inflammation and asthma exacerbations; effects that contribute to emergency department visits or hospital admissions; and mortality. The revised secondary standard provides protection of natural forests from adverse growth-related effects and is expected to provide increased protection from other effects of potential public welfare significance, including crop yield loss and visible foliar injury.

## Clean Air Act Designation Requirements

Section 107(d) of the Clean Air Act (CAA) governs the process for initial area designations after the EPA establishes a new or revised NAAQS. Under section 107(d) of the CAA, states are required to submit area designation recommendations to the EPA. This submission must happen by a date specified by the EPA, which cannot be sooner than 120 days, or later than 1 year, after promulgation of the new or revised NAAQS. If, after careful consideration of these recommendations, the EPA intends to promulgate a designation different from a state's recommendation, then the EPA must notify the state at least 120 days prior to promulgating the final designation and must provide the state an opportunity to comment on the intended modification. The EPA may choose to modify a state's recommended designation as it relates to the status of an area or as it relates to the boundaries of an area. The CAA requires the EPA to complete the initial designation process within 2 years of promulgation of a new or revised NAAQS, unless the Administrator has insufficient information to make initial designation decisions in the 2-year time frame. In such circumstances, the EPA may take up to 1 additional year to make initial area designation decisions (i.e., no later than 3 years after promulgation of the standard). While section 107(d) of the CAA specifically addresses the designations process between the EPA and states, the EPA intends to follow the same process to the extent practicable for tribes that choose to make initial designation recommendations pursuant to section 301(d) of the CAA regarding tribal authority and the Tribal Authority Rule (TAR) (63 FR 7254, February 12, 1998). To provide clarity and consistency in doing so, in December 2011, the EPA issued a guidance memorandum concerning the involvement of tribes in the designations process.<sup>1</sup> In accordance with the TAR and the December 2011 tribal designations guidance, and in consultation with the tribes, the EPA intends to designate tribal areas on the same schedule as designations for states. If a state or tribe does not submit designation recommendations, then the EPA will promulgate the initial designations that the agency deems appropriate.

## Schedule for Initial Ozone Area Designations

State governors should submit, and tribes can choose to submit, their initial designation recommendations for the 2015 ozone NAAQS to the EPA no later than 1 year following promulgation of the revised NAAQS, i.e., by October 1, 2016. Because the form of the 2015 ozone NAAQS relies on a 3-year average, we recommend that states and tribes base their recommendations on air quality data from the 3 most recent years of quality assured monitoring data available at that time, i.e., 2013 to 2015. However, states and tribes may also have preliminary information about 2016 monitoring data that could help inform their recommendations. Based upon these monitoring data and any other available information, states and tribes should identify areas as attainment, nonattainment, or unclassifiable.<sup>2</sup> If

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<sup>1</sup> Guidance to Regions for Working with Tribes during the National Ambient Air Quality Standards (NAAQS) Designations Process. Memorandum from Stephen D. Page, Director, EPA OAQPS to Regional Administrators, Regions I-X. December 20, 2011. Available at <http://www.epa.gov/ttn/oarpg/t1/memoranda/20120117naaqsguidance.pdf>.

<sup>2</sup> For the initial area designations for the 1997 ozone NAAQS and the 2008 ozone NAAQS, the EPA used a designation category of "unclassifiable/attainment" for areas that were monitoring attainment and for areas that did not have monitors but for which the EPA had reason to believe were likely attainment and were not contributing to nearby violations. The EPA reserved the category "unclassifiable" for areas where the EPA could not determine based on available information whether the area was meeting or not meeting the NAAQS and the EPA had not determined that the area contributed to a nearby violation. While states can submit recommendations identifying areas as "attainment," the EPA expects to continue to use the "unclassifiable/attainment" category for designations for the 2015 ozone NAAQS.

the EPA believes it is necessary to make any modifications to a state's or tribe's initial recommendations, including area boundaries, then the EPA will notify the state or tribe by letter of the intended modification no later than 120 days prior to finalizing the designation. These notifications are commonly known as the "120-day letters." Consistent with the statutory requirement that the EPA designate areas no later than 2 years following promulgation of a revised NAAQS, the EPA expects to complete the initial area designations by October 1, 2017. Thus, the EPA intends to issue the 120-letters no later than June 2, 2017. If a state or tribe has additional information that it wants the EPA to consider with respect to a designation recommendation that the EPA plans to modify, then the EPA requests that such information be submitted no later than 60 days from the date of the 120-day letter. This schedule will ensure that the EPA can fully consider any such additional information prior to issuing final designations. Also, although section 107(d) of the CAA explicitly exempts the designation process from the public notice and comment rulemaking process, the EPA intends to consider public input in the designation process. Accordingly, we plan to provide a 30-day public comment period immediately following issuance of the 120-day letters responding to the designation recommendations from states and tribes.<sup>3</sup> Attachment 1 summarizes this anticipated schedule.

### **Identifying Nonattainment Areas**

Section 107(d)(1) of the CAA directs the EPA to designate an area "nonattainment" if it is violating the NAAQS or if it is contributing to a violation of the NAAQS in a nearby area. Thus, the first step in the designation process is to identify air quality monitoring sites with data that show a violation of the 2015 ozone NAAQS. Violations are identified using data from Federal Reference Method (FRM) and Federal Equivalent Method (FEM) monitors that are sited and operated in accordance with 40 CFR part 58. Procedures for using the air quality data to determine whether a violation has occurred are given in 40 CFR part 50 Appendix U, as revised in conjunction with the final rule for the 2015 ozone NAAQS (80 FR 65292, October 26, 2015). For designations for the 2015 ozone NAAQS, the EPA intends to evaluate areas using the most recent complete three consecutive calendar years of quality-assured, certified air quality data in the EPA Air Quality System (AQS).<sup>4</sup> In accordance with 40 CFR 58.15, states are required to certify their air monitoring data for the previous year by May 1 of each year. Although generally the EPA will use such data only if they have been certified by the reporting organization, data not certified by the reporting organization can nevertheless be used if the deadline for certification has passed and the EPA judges the data to be complete and accurate. We expect that in providing designation recommendations to the EPA by October 1, 2016, states and tribes will review and rely on air quality data from 2013 to 2015. States and tribes may also review and consider preliminary 2016 data, although those data cannot be relied on until they are either certified in accordance with 40 CFR 58.15 or the date for certification has passed. Air quality monitoring data from 2016 are required to be certified and quality assured by May 1, 2017. Because the certification date will have passed and the data will be available, the EPA expects to base final designation decisions by October 1, 2017, on data

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<sup>3</sup> Section 107(d)(2) explicitly provides that designations are exempt from the notice and comment provisions of the Administrative Procedure Act (APA). Likewise, designations under section 107(d) of the CAA are not among the list of actions that are subject to the notice and comment procedures of CAA section 307(d). Thus, neither the CAA nor the APA require notice and comment rulemaking for promulgation of the designations for these or any other NAAQS. However, the EPA intends to solicit direct public comment on its preliminary responses to the initial area designation recommendations of the states and tribes because we believe this process will be useful to gather additional information and to assure that the agency is more directly aware of issues raised by initial area designations.

<sup>4</sup> This information is available on the EPA's website at <http://www2.epa.gov/aqs>.



from 2014 to 2016.<sup>5</sup> For this reason, the EPA encourages states and tribes to review and consider preliminary 2016 air quality data in their designation recommendations. States and tribes may also update their designation recommendations based on 2016 data once the data have met the certification requirements.

The EPA notes that in past designations, some states have chosen to certify air quality data prior to the certification deadline (i.e., “early certify”) so that the EPA could rely on the newer data for designations. For multistate nonattainment areas, there have been situations where some, but not all, of the states with portions in the area have chosen to early certify their data. In such cases, the “most recent air quality data” for the area is a mix of two different 3-year periods – an earlier time period for those states that did not early certify data and a later time period for those states that chose to early certify. The most common situation is where one state that is part of the multistate area early certifies data that show attainment of the NAAQS. The other is where one state early certifies data that show a violation. The EPA’s position is that the agency cannot review mixed years of data to conclude that an area is attaining the standard; the decision must be based on the same 3-year period for all portions of the area. In contrast, if the early certified data for one state’s portion of a multistate area indicate a violation of the NAAQS, the EPA’s position is that the agency must consider the violating monitor and assess what nearby areas contribute to the violation.<sup>6</sup>

The process for evaluating the appropriate designation for areas that are not violating the NAAQS, but may be contributing to the violations of the NAAQS in a violating area, is discussed below in connection with the process for determining appropriate nonattainment area boundaries.

### **Exceptional Events and Designations**

When certain criteria are met, the CAA and the EPA’s implementing regulations specified in the Final Rule on the Treatment of Data Influenced by Exceptional Events (72 FR 13560, March 22, 2007)<sup>7</sup> allow for the exclusion of air quality monitoring data from design value calculations when there are exceedances caused by exceptional events. A design value describes the air quality status of a given location relative to the level of the NAAQS. A design value calculated using a data set from which exceptional event-influenced data have been excluded has the potential to affect initial area designations and nonattainment area classifications for the 2015 ozone NAAQS.

In the 2015 ozone NAAQS final rule, the EPA established schedules for air agencies to flag data influenced by exceptional events and submit related documentation for data that will be used in the initial designations process for the 2015 ozone NAAQS (*see* Attachment 2). Although some of these deadlines are accelerated compared to the general schedule timelines in the 2007 Exceptional Events

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<sup>5</sup> In the final rule for the 2015 ozone NAAQS, the EPA also finalized changes to the ambient air monitoring requirements applicable to the ozone NAAQS. In 32 states and the District of Columbia, the final rule extends the ozone season. The new ozone season requirements do not take effect until January 1, 2017.

<sup>6</sup> The Court of Appeals for the D.C. Circuit upheld this approach as reasonable. *Miss. Comm’n on Env’tl. Quality v. EPA*, 790 F.3d 138, 160 (D.C. Cir. 2015).

<sup>7</sup> On November 10, 2015, the EPA proposed revisions to the 2007 Exceptional Events Rule and announced the availability for public comment of a draft guidance document, which applies the proposed rule revisions to wildfire events that could influence monitored ozone concentrations. *See* 80 FR 72840, November 20, 2015. The EPA intends to finalize these rule revisions and the wildfire guidance by the October 1, 2016, date by which states, and any tribes that wish to do so, are required to submit their initial designation recommendations for the 2015 ozone NAAQS.



Rule, they were promulgated to align closely with the timing of the initial designations recommendations from states and tribes in October 2016 and/or the EPA's expected issuance of 120-day letters pertaining to designations by June 2017. These schedules reflect the EPA's interest in ensuring that we can fully consider exceptional events claims that could influence the final designations decisions.

The EPA regional offices are encouraged to work with states and tribes with exceptional events claims to prioritize and expedite the demonstration development and review process for those claims that have the potential to influence regulatory decisions, such as the initial designations process. Similarly, the EPA encourages states and tribes to contact and collaborate with the appropriate EPA regional office after identifying any exceptional events that influence ambient air quality concentrations in a way that could potentially affect designations for the 2015 ozone NAAQS. The EPA has developed interim exceptional events implementation guidance documents that air agencies can use when reviewing potential exceptional events and developing appropriate exceptional event demonstrations. Additional information and examples of exceptional event submissions and best practice components can be found at the EPA's exceptional events website located at <http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events>.

### **Nonattainment Area Analyses and Boundary Determination**

The EPA believes that the boundaries for each nonattainment area should be evaluated and determined on a case-by-case basis considering the specific facts and circumstances unique to the area. Section 107(d) explicitly requires that the EPA designate as nonattainment not only the area that is violating the pertinent standard, but also those nearby areas that contribute to the violation in the violating area. After identifying each monitor that indicates a violation of the 2015 ozone NAAQS in an area, the EPA will determine which nearby areas contribute to the violation(s).

Ground-level ozone is not emitted directly into the air, but is formed by chemical reactions primarily between oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOC) that are attributable to a variety of emission sources commonly found throughout urbanized areas. Because ozone and its precursor emissions are pervasive and readily transported, the EPA believes it is important to examine ozone-contributing emissions across a relatively broad geographic area associated with a monitored violation. Thus, for analyzing whether nearby areas contribute to a violating area, the EPA intends to consider information relevant to designations associated with the counties in the Combined Statistical Area (CSA) or, where appropriate, the Core Based Statistical Area (CBSA) in which the violating monitor(s) are located. The CSAs and CBSAs are delineated by the Office of Management and Budget (OMB) as part of their Metropolitan and Micropolitan Statistical Area program.<sup>8</sup> The CBSA is a collective term that refers to both Metropolitan Statistical Areas (MSAs) and Micropolitan Statistical Areas (Micropolitan Areas), which are distinguished by size. An MSA has at least one urban area with a population of at least 50,000. A Micropolitan Area has at least one urban area with a population of at

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<sup>8</sup> OMB adopted revised standards for defining Metropolitan and Micropolitan Statistical Areas on December 27, 2000 (65 FR 82229). These standards established the terms CSA and CBSA. In 2010, OMB further revised the standards for delineating Metropolitan and Micropolitan Statistical Areas (75 FR 37246, June 28, 2010). The statistical areas are delineated based on U.S. Census Bureau information. The EPA intends to use the 2010 standards and the associated lists of CSAs and CBSAs issued in February 2013. These lists and their geographic components are provided at <http://www.census.gov/population/metro/>.

least 10,000, but less than 50,000. Each CBSA consists of a county or counties associated with at least one urban core, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties containing the core.<sup>9</sup> A CSA includes two or more adjacent CBSAs.

The EPA previously reviewed relevant information associated with OMB statistical area boundaries when analyzing nonattainment areas for the 1997 and 2008 ozone standards. We believe this is a reasonable approach to ensure that the nearby areas most likely to contribute to a violating area are evaluated.<sup>10</sup> The EPA emphasizes it does not intend the statistical area boundary to be a presumed nonattainment area boundary. The area-specific analyses may support nonattainment boundaries that are smaller or larger than the CSA or CBSA.<sup>11</sup> Where a violating monitor is not located in a CSA or CBSA, the EPA intends to review relevant information associated with the county containing the monitor and, if appropriate, other adjacent nearby counties. The EPA will determine the nonattainment area boundaries through a weight-of-evidence analysis for the area based on synthesizing the assessments of the five factors identified below. In relatively urbanized areas, the nonattainment area boundary may include an entire metropolitan area. In rural locations, the nonattainment area boundary may include one or more small population centers, each with sources that contribute to a violating monitor. In some cases, the boundary for a nonattainment area may include portions of two or more states, thus resulting in a multistate area. This approach to designations has been upheld by numerous courts under a variety of challenges.

Consistent with past designations for ozone NAAQS, for area-specific analyses through which the EPA intends to determine area boundaries, the EPA will evaluate information relevant to five factors: air quality data, emissions and emissions-related data, meteorology, geography/topography, and jurisdictional boundaries. The EPA also recommends that states and tribes base their boundary recommendations on an evaluation of information relevant to these five factors. Attachment 3 describes these factors in general and provides guidance regarding analyses relevant to each of these factors.<sup>12</sup> Additionally, the EPA, states and tribes may identify and evaluate other relevant information or circumstances specific to a particular area to support nonattainment area boundary recommendations.

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<sup>9</sup> The geographic components of CBSAs are counties and equivalent entities (boroughs and census areas in Alaska, parishes in Louisiana, independent cities in Maryland, Missouri, Nevada, and Virginia, and municipios in Puerto Rico).

<sup>10</sup> The EPA notes that for the purpose of the designations for the 1-hour ozone standards at the time the CAA was amended in 1990, CAA section 107(d)(4)(A)(iv) and (v) specified the use of the OMB statistical areas as the boundaries that applied by operation of law for the then-existing nonattainment areas classified as Serious, Severe, and Extreme, unless a governor made a demonstration to the satisfaction of the EPA Administrator that a portion did not contribute.

<sup>11</sup> The Court of Appeals for the D.C. Circuit upheld the EPA's interpretation of the term "nearby" as being reasonable and consistent with the statute. *Miss. Comm'n on Env'tl. Quality v. EPA*, 790 F.3d 138, 160 (D.C. Cir. 2015).

<sup>12</sup> In the designation guidance for the 2012 PM<sub>2.5</sub> NAAQS, the EPA used these same five factors. In prior designation guidance for the ozone and PM<sub>2.5</sub> standards, the EPA identified nine factors to consider in making designation recommendations: emissions data, air quality data, population density and degree of urbanization, traffic and commuting patterns, growth rates and patterns, meteorology, geography/topography, jurisdictional boundaries, and level of control of emission source. In the area analyses to support the designations for the 2008 ozone standards, the EPA grouped the emissions-related factors together in the emissions and emissions-related data factor, resulting in five overall factors. The Court has upheld the EPA's use of a multi-factor test for designations multiple times. See *Mississippi Commission on Env. Quality v. EPA*, 709 F.3d 138 (D.C. Cir. 2015); *ATK Launch Sys., Inc. v. EPA*, 669 F.3d 330 (D.C. Cir. 2012); *Catawba Cnty. v. EPA*, 571 F.3d 20 (D.C. Cir. 2009).

While the EPA generally believes it is appropriate to include the entire violating or contributing county in an ozone nonattainment area, we recognize that, in some cases, an assessment of relevant information may support inclusion of only part of a county. For example, as has been the case in past designations, there may be low elevation areas (e.g., valleys) with poor air quality in violation of the NAAQS due to restricted atmospheric dispersion where higher elevations (e.g., mountainous areas) in the same county can be shown not to have sources of emissions that contribute to the violation. Alternatively, partial county boundaries may be appropriate in situations where the sources located in a contributing county are located only in a portion of a large county that is otherwise not contributing to the nearby violations. Particularly in the western United States where counties are large, including only partial counties in a designated nonattainment area may be appropriate. For defining partial county boundaries, the EPA recommends the use of well-defined legal jurisdictional boundaries such as townships, census blocks, immovable landmarks (e.g., major roadways), or other permanent and readily identifiable boundaries.

In addition, as provided for in the December 20, 2011, guidance titled, "Policy for Establishing Separate Air Quality Designations for Areas of Indian Country," tribes may recommend that the EPA designate areas of Indian country separately from the adjacent state areas.<sup>13</sup> This guidance provides for a nationally consistent approach for evaluating such designation recommendations from tribes. The policy was designed to recognize tribal sovereignty in air quality management matters affecting Indian country.

### **Nonattainment Area Classifications**

As provided in CAA section 181(a)(1), at the time of initial designations, the EPA will classify all nonattainment areas according to the severity of the ozone air quality problem. The classification categories are Marginal, Moderate, Serious, Severe-15, Severe-17 and Extreme. The EPA previously interpreted the air quality thresholds associated with each classification through rulemaking for both the 1997 and 2008 ozone NAAQS. We intend to take a similar approach for the 2015 ozone NAAQS and will finalize the rulemaking no later than the promulgation of the final designations.

Under CAA section 181(a)(4), the EPA has the discretion to reclassify a nonattainment area to a higher or lower classification (also known as a bump up or a bump down) within 90 days of the effective date of the initial designation and classification if the area would have been classified in another category had the area's design value been 5 percent greater or 5 percent less than the level on which the initial classification was based. The EPA does not intend to exercise its authority independently to initiate a reclassification of an area to a higher or lower classification. Rather, the EPA intends to rely on a state or tribe to submit a request for such a reclassification. As part of the action to designate and classify areas in 1991 for the 1-hour NAAQS, the EPA developed criteria for evaluating a state's request to reclassify a particular area to a lower classification. See 56 FR 56698, November 6, 1991. The EPA intends to continue to use the same approach for purposes of evaluating a request to reclassify an area to a lower classification for the 2015 ozone NAAQS. In the *Federal Register* action to designate areas for the 2015 ozone NAAQS, the EPA will provide the schedule for submitting a reclassification request under section 181(a)(4) that would allow sufficient time for the EPA to make a determination within the 90-day period allowed under the CAA.

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<sup>13</sup> Memorandum from Stephen D. Page, Director, EPA OAQPS to Regional Administrators, Regions I-X. December 20, 2011. Available at <http://www.epa.gov/ozone-designations>.

Section 181(b)(3) of the CAA allows a state to voluntarily request that the EPA reclassify a nonattainment area in that state to a higher classification. The EPA must grant the request. Multistate nonattainment areas present a special case because the area is not wholly in one state and classifications apply areawide. For multistate nonattainment areas, the EPA strongly encourages all of the states with a portion included in the nonattainment area to consult and agree prior to submission of a reclassification request. Section 181(b)(3) does not place a time limit on the opportunity for a state to request a voluntary reclassification of a nonattainment area to a higher classification. These voluntary reclassifications can be done at any time.

## **Rural Transport Areas**

The EPA recognizes that violations of the ozone standards in some rural areas may be almost entirely attributable to emissions from upwind areas and/or sources of background ozone. Section 182(h) provides the EPA with the discretion to treat an ozone nonattainment area as a “rural transport area” (RTA), provided the area meets certain criteria. Regardless of the area’s classification under section 181(a), an RTA is deemed to have fulfilled all ozone-related planning and control requirements if it meets the CAA’s planning requirements for areas classified as Marginal.<sup>14</sup> To qualify as an RTA, the EPA must determine that the nonattainment area boundary does not include and is not adjacent to any part of an MSA<sup>15</sup>, and that the area does not contain VOC and NO<sub>x</sub> emissions sources that make a significant contribution to monitored ozone concentrations in the area or in other areas. A nonattainment area that includes, or is adjacent to, any part of a Micropolitan Statistical Area or that is too sparsely populated to be included in a statistical area, may be able to qualify as an RTA.

States and tribes that believe a potential nonattainment area qualifies for treatment as an RTA are encouraged to request, as part of their recommendations, that the EPA use the section 182(h) authority and to work with the EPA to develop and review information that would satisfy the CAA’s RTA criteria. In general, the EPA expects a rural nonattainment area that has few or insignificant sources of ozone precursors to encompass a relatively small geographic area due to the lack of emission sources. Therefore, partial county boundaries may be appropriate. The EPA expects this to be especially relevant in the western United States, where many of the counties are large. A partial county nonattainment area located in a county that is adjacent to an MSA may still be able to qualify as an RTA provided that the nonattainment area boundary is not adjacent to the MSA boundary. The EPA intends to respond to any RTA request submitted during the designation process at the time the EPA promulgates the initial area designations. However, the EPA notes that a state or tribe may also request RTA treatment for a nonattainment area after the initial designations are completed. Attachment 3 provides information on conducting an analysis to support an RTA request.

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<sup>14</sup> The requirements applicable to ozone transport regions supersede the Marginal requirements for RTAs.

<sup>15</sup> The rural transport area criteria in section 182(h) restrict rural transport areas to those nonattainment areas that do not include and are not adjacent to any part of a “MSA” or “CMSA” as defined at the time of the 1990 CAA amendments. The OMB issued revised statistical area standards in 2000 that replaced the pre-existing MSA and CMSA definitions and established the terms “CBSAs” and “CSA.” In 2010, OMB further revised the standards. The CBSA is a collective term that includes MSAs and Micropolitan Statistical Areas. The EPA interprets the references to both MSA and CMSA in CAA section 182(h) to refer to OMB’s current definition of MSA. *See* 80 FR 12264, March 6, 2015. The EPA believes this interpretation of CAA section 182(h) is consistent with the original scope of CAA section 182(h) as promulgated in 1990.



## **Unclassifiable Areas**

In certain cases, there may be insufficient information to support a designation of nonattainment or attainment for an area. For example, there may be monitors that indicate an exceedance of the NAAQS, but the monitoring data may be incomplete or the monitors may not be sited and operated in accordance with the regulatory requirements of 40 CFR part 58. In recommending boundaries for an unclassifiable area, states should consider which nearby areas contribute to ambient air quality within the impacted area. The EPA notes that if sufficient information later becomes available indicating a monitor in the unclassifiable area is violating the NAAQS and the EPA redesignates the area to nonattainment, the EPA likely would conduct a weight-of-evidence analysis as described in Attachment 3 of this guidance to determine the appropriate area boundaries.

## **Attainment Areas**

Once the EPA has determined the boundaries for nonattainment areas (areas that are violating the NAAQS or contributing to a nearby violation) and any unclassifiable areas, the EPA intends to designate the remainder of the state as unclassifiable/attainment.<sup>16</sup> The EPA requests that states and tribes recommend how they would like the boundaries drawn for their unclassifiable/attainment areas. For designations for the 1-hour and two previous 8-hour ozone NAAQS, states have elected to draw boundaries for the unclassifiable/attainment areas in a variety of ways, including as “rest of state” or “entire state,” by Air Quality Control Regions, by county, by previous nonattainment area boundaries, or by a combination of methods. The EPA recommends that the boundaries of unclassifiable/attainment areas generally not be smaller than a county.

## **Summary**

This memorandum provides the EPA’s preliminary views on the process for determining initial area designations and boundaries for the 2015 ozone NAAQS. Any guidance contained herein is not binding on states, tribes, the public or the EPA. The EPA will make the designations determinations and nonattainment area boundary decisions in the final action that designates all areas for the 2015 ozone standards. When the EPA promulgates the initial area designations, those decisions will be binding on states, tribes, the public and the EPA as a matter of law.

Three attachments provide additional information relevant to the initial ozone area designations process. Attachment 1 is an anticipated timeline of important milestones in the initial area designations process for the 2015 ozone NAAQS. Attachment 2 identifies the promulgated exceptional event schedule for initial data flagging and submission of exceptional event demonstrations. Attachment 3 provides information on the five factors that the EPA intends to consider in evaluating and making decisions on nonattainment area boundaries and provides guidance regarding analyses relevant to support each of the factors. Attachment 3 also provides information on conducting an analysis to support an RTA request.

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<sup>16</sup> As indicated in footnote 2, in the initial designations for previous ozone NAAQS, the EPA used a designation category of “unclassifiable/attainment” for areas that were monitoring attainment and for areas that did not have monitors but for which the EPA had reason to believe were likely attainment and were not contributing to nearby violations. The EPA expects to continue this approach for designations for the 2015 ozone NAAQS.

Staff in the EPA's Office of Air Quality Planning and Standards are available for assistance and consultation throughout the initial area designation process. Questions on this guidance may be directed to Carla Oldham at (919) 541-3347 or Denise Scott at (919) 541-4280.

Attachments (3)

1. Anticipated Timeline For 2015 Ozone NAAQS Designation Process
2. Revised Schedule For Exceptional Event Flagging And Documentation Submission For Data To Be Used In Initial Area Designations For The 2015 Ozone NAAQS
3. Factors the EPA Plans to Consider in Determining Nonattainment Area Boundaries in Designations for the 2015 Ozone NAAQS, and Guidance on Analyses to Support these Factors

## ATTACHMENT 1

| ANTICIPATED TIMELINE FOR 2015 OZONE NAAQS DESIGNATION PROCESS  |  |
|--|--|
| Milestone  | Date   |
| The EPA promulgates 2015 Ozone NAAQS rule  | October 1, 2015  |
| States and tribes submit recommendations for ozone designations to the EPA   | No later than October 1, 2016  |
| The EPA notifies states and tribes concerning any intended modifications to their recommendations (120-day letters)  | No later than June 2, 2017 (120 days prior to final ozone area designations) |
| The EPA publishes public notice of state and tribal recommendations and the EPA's intended modifications, if any, and initiates 30-day public comment period | On or about June 9, 2017   |
| End of 30-day public comment period  | On or about July 10, 2017  |
| States and tribes submit additional information, if any, to respond to the EPA's modification of a recommended designation                                   | No later than August 7, 2017   |
| The EPA promulgates final ozone area designations  | No later than October 1, 2017  |

## ATTACHMENT 2

### Revised Schedule for Exceptional Event Flagging and Documentation Submission for Data to be Used in Initial Area Designations for the 2015 Ozone NAAQS

| NAAQS Pollutant/<br>Standard/(Level)/<br>Promulgation Date   | Air Quality<br>Data Collected<br>for Calendar<br>Year | Event Flagging &<br>Initial Description<br>Deadline | Detailed<br>Documentation<br>Submission Deadline |
|--|---|---|--|
| Ozone/<br>Primary and<br>Secondary 8-hour<br>Standards<br>(0.070 parts per<br>million)<br>Promulgated<br>October 1, 2015 | 2013, 2014, 2015                                      | July 1, 2016  | October 1, 2016                                  |
|  | 2016  | May 31, 2017  | May 31, 2017                                     |



## ATTACHMENT 3

### **Factors the EPA Plans to Consider in Determining Nonattainment Area Boundaries in Designations for the 2015 Ozone NAAQS, and Guidance on Analyses to Support these Factors**

For initial area designations for the 2015 ozone national ambient air quality standards (NAAQS), the Environmental Protection Agency will rely on monitoring data to identify areas to be designated nonattainment due to monitored violations of the standard. Consistent with the directives of the Clean Air Act (CAA) and with previous area designation processes, the EPA will then determine the appropriate nearby<sup>1</sup> areas to include within the nonattainment area boundary for the violating area, based on emissions that contribute to these violations. For each monitor or group of monitors indicating a violation of the NAAQS, the EPA intends to assess information related to five factors for the purpose of establishing the appropriate geographic boundaries for designated ozone nonattainment areas. The EPA will evaluate relevant information from the entire area (i.e., Combined Statistical Area / Core Based Statistical Area) containing the violating monitor(s) and any adjacent counties or nearby areas that have the potential to contribute. For those portions of the area where an evaluation of the available information clearly establishes that emissions sources do not contribute to exceedances at the violating monitor(s), the EPA believes it would be appropriate to exclude that portion of the area from the nonattainment area. This weight-of-evidence approach to determining area boundaries could result in nonattainment areas consisting of an entire metropolitan area, single counties, or, in cases supported by relevant evidence, partial counties, including partial counties within larger urban areas or in relatively isolated locations. While technical assessments can help to define the magnitude or relative magnitude of contribution from nearby areas, the EPA is not setting a threshold contribution level or “bright line” test for determining whether a contributing area should be included within the boundaries of a given nonattainment area. Section 107(d) of the CAA does not require the EPA to set a threshold contribution. As was done in prior NAAQS designations, the EPA believes that the contribution determination should be made through a case-by-case evaluation of the relevant facts and circumstances in each nonattainment area.

As a framework for area-specific analyses to support nonattainment area boundary recommendations and final boundary determinations, the EPA believes it is appropriate to evaluate the following five factors:

1. air quality data,
2. emissions and emissions-related data,
3. meteorological data,
4. geography/topography, and
5. jurisdictional boundaries.

The EPA notes that these five factors are comparable to the factors that states and tribes and the EPA have used successfully for analytical purposes in prior designations. The recommendation of these factors is not intended to indicate that other relevant information should not be considered in the initial area designations process, as appropriate. Where a state or tribe includes additional information or analysis as part of its recommendation, the EPA will evaluate that information as part of its review in determining the appropriate nonattainment area designation.

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<sup>1</sup> The Court of Appeals for the D.C. Circuit upheld the EPA’s interpretation of the term “nearby” as being reasonable and consistent with the statute. *Miss. Comm’n on Envtl. Quality v. EPA*, 790 F.3d 138, 160 (D.C. Cir. 2015).

This attachment is intended to provide guidance regarding available data that states and tribes may wish to assess when evaluating these five factors. This guidance also provides insight into the EPA's subsequent review and evaluation of the state and tribal nonattainment area boundary recommendations. The guidance offers suggestions about techniques and approaches; it does not contain requirements to be strictly followed and should not be read as prescriptive with respect to the specific techniques recommended.

The EPA recognizes that some of the recommended assessments can be resource intensive. To help mitigate this potential concern, the EPA intends to provide an Ozone Designations Mapping Tool to assist air agencies in developing their area designation and nonattainment boundary recommendations and to provide the relevant data to facilitate the analyses. The EPA will make the Ozone Designations Mapping Tool available on the ozone designations website.<sup>2</sup> The table below outlines the datasets that the EPA expects to make available to the public on the ozone designations website and the expected date of availability. Design values for the 3-year period 2012 – 2014 are currently available<sup>3</sup> and will also be posted on the ozone designations website. The EPA will update this website during the initial area designations process as other relevant datasets are identified.

#### Datasets the EPA will Provide via the EPA Ozone Designations Website

| Dataset   | Expected Availability Date |
|---|----------------------------|
| 2013 – 2015 Ozone Design Values   | Summer 2016                |
| 2014 – 2016 Ozone Design Values   | Summer 2017                |
| Nitrogen Oxide (NO <sub>x</sub> )/VOC Point sources and county level emissions and Vehicle Miles Traveled (VMT) from 2011 National Emissions Inventory (NEI) <sup>4</sup> version 2 | March 2016                 |
| County and Census Tract Population  | March 2016                 |
| HYSPLIT Trajectory data *   | March 2016                 |
| Geography/Topography *  | March 2016                 |
| Jurisdictional Boundaries *   | March 2016                 |

\* Separate datasets will not be provided. The information will be part of the web-based Ozone Designations Mapping Tool.

This guidance also offers recommendations concerning how states and tribes may wish to describe the basis for their initial designations recommendations. The EPA recommends that states and tribes articulate those recommendations in a narrative format. Thus, this guidance provides some direction regarding the content and structure of a narrative that describes the problem in a potential nonattainment area with monitors violating the NAAQS. A comprehensive narrative would articulate a conceptual model of the area that explains the nature and causes of the ozone air quality problem in the specific area, identifies the scope and scale of the air quality problem in that area, and describes all nearby emission sources that contribute to the problem.<sup>5</sup> For multistate or multi-jurisdictional areas, the EPA

<sup>2</sup> <http://www.epa.gov/ozone-designations/>

<sup>3</sup> <http://www3.epa.gov/airtrends/values.html>

<sup>4</sup> The 2014 NEI may not be available for initial designation recommendations. If it becomes available, then it will be considered in lieu of the 2011 NEI.

<sup>5</sup> Chapter 2.1 of the EPA's Draft Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, PM<sub>2.5</sub>, and Regional Haze has a detailed description of how to develop a sound conceptual description of an air quality problem. The document is located at: [http://www3.epa.gov/ttn/scram/guidance/guide/Draft\\_O3-PM-RH\\_Modeling\\_Guidance-2014.pdf](http://www3.epa.gov/ttn/scram/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf).

encourages states and tribes to work collaboratively to develop a single narrative. However, states or tribes with areas contributing to potential multistate or multi-jurisdictional nonattainment areas could also develop a conceptual model that describes only the contribution from the areas within their jurisdiction to the larger nonattainment area, rather than attempting to describe the scope and scale of the air quality problem throughout the entire area. Where a single area-wide narrative on the causes of the ozone air quality problem is not developed, the EPA will collectively use the information in all relevant submittals, along with other relevant data, to make its decision on the extent and designation of the multi-state area.

The underlying analytical framework of the recommended narrative can be summarized as follows:

- Determine violating monitors with design values greater than the NAAQS and gather data that enables an assessment of potential nearby contributing areas and the emissions sources (NO<sub>x</sub> and VOC) in those areas.
- Assess and characterize the spatial and temporal differences in ozone concentrations within the area using data from Federal Reference Method (FRM)/Federal Equivalent Method (FEM) ozone monitors, as well as data from other FRM/FEM ozone monitors in nearby areas, if available.
- Areas may find it useful to assess and characterize the area-specific sensitivity of ozone formation to NO<sub>x</sub> and VOC emissions. The amount of ozone formed in any given area depends on the amount of NO<sub>x</sub>, VOC, and sunlight available to interact in a set of complex chemical reactions to form ozone. Depending on the local situation, peak ozone concentrations may be NO<sub>x</sub>-sensitive, VOC-sensitive, or a mix of the two depending upon other conditions. Understanding the relative role of local NO<sub>x</sub> and VOC emissions sources to ozone formation in the area violating the NAAQS helps identify which nearby emissions sources may be contributing to the monitored violations. Ambient data analyses and/or photochemical modeling simulations can be used to assess and characterize local ozone sensitivities.
- The information identified in the previous bullets can be evaluated in conjunction with emissions data and emissions-related data (e.g., vehicle miles traveled and population) to determine which source categories and source regions are contributing to the monitored violations.
- Once the emissions and air quality assessments have been evaluated, it is valuable to then assess the meteorology during the ozone season in the violating area. Weather patterns will have a large impact on the determination of contributing source regions. This analysis may further help to identify the relative magnitude of contributions from emission sources in nearby areas.
- Additionally, it may be useful to assess any geographic/topographic information, which could have consequences for transport, meteorology, and ozone formation in the area.
- Finally, all of the above assessments would be aggregated or synthesized into a consistent narrative that describes the relationship between sources in the analysis area and the measured exceedances. It will also be useful to assess jurisdictional considerations that could be relevant in identifying a nonattainment area boundary. This synthesis should represent a collective “weight-of-evidence” regarding the most appropriate boundaries for the nonattainment area.

While the general 5-factor framework is expected to be comprehensive and provide the foundation for each assessment of area boundaries, the extent of the analyses may vary on an area-by-area basis based on the nature, cause, and extent of the ozone air quality problem. This guidance suggests analyses of certain data sets that can be useful to assess which nearby areas contribute to nonattainment in a given area. In cases where more highly-resolved or newer data sets are available that are not explicitly mentioned in this guidance, states and tribes should consider their use. If these data are used, the EPA recommends that the states or tribes fully describe the data and their derivation in their supporting documentation for the designation recommendation.

The following sections provide more detail on the five factors and the weight-of-evidence approach that the EPA plans to consider when evaluating state and tribal recommendations and determining nonattainment area boundaries for the 2015 ozone NAAQS.

## 1. Air Quality Data

Ozone in the troposphere is a secondary pollutant formed by photochemical reactions of precursor gases and is not directly emitted from specific sources. Ozone is formed by atmospheric reactions involving two main classes of precursor pollutants: VOCs and NO<sub>x</sub>. The formation of ozone is a complex, nonlinear function of many factors, including the intensity of sunlight, atmospheric mixing, the concentration of ozone precursors in the air, and the rates of chemical reactions of these precursors. Ozone is largely regional in nature with some higher values occurring in locations with ozone-conducive emissions, meteorological conditions, or transport patterns.

The first step in identifying an area to be designated nonattainment and to determine an appropriate nonattainment area boundary is to identify all monitored violations of the NAAQS using the most recently available design values. The EPA determines NAAQS compliance by considering the design value for each air quality monitoring site. The design value for the 2015 ozone NAAQS is the 3-year average of the annual 4<sup>th</sup> highest daily maximum 8-hour average concentrations.<sup>6</sup> Only ozone measurement data collected in accordance with the quality assurance (QA) requirements<sup>7</sup> using approved FRM/FEM monitors can be used for NAAQS compliance determinations. The EPA uses FRM/FEM measurement data residing in the EPA's Air Quality System (AQS) to calculate the ozone design values. Individual measurements that the EPA determines to be "exceptional" in accordance with the Exceptional Events Rule<sup>8</sup> (such as days with poor air quality caused by wildland fire) are not included in these calculations. State and tribal monitoring agencies are required to annually certify data submitted to AQS by May 1st of the subsequent year.<sup>9</sup> A tribal monitoring agency must certify its data if the tribe is monitoring for regulatory purposes. A tribe may also be specifically required to certify its data under terms of a grant from EPA. Tribes should consult with the appropriate Regional office on questions regarding regulatory monitoring and the certification process. The EPA typically extracts ambient data from AQS and calculates official design values for regulatory purposes shortly after the

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<sup>6</sup> The specific methodology for calculating the ozone design values, including computational formulas and data completeness requirements, is described in 40 CFR part 50, Appendix U.

<sup>7</sup> The QA requirements for ozone monitoring data are specified in 40 CFR part 58, Appendix A.

<sup>8</sup> Final Rule on the Treatment of Data Influenced by Exceptional Events (72 FR 13560, March 22, 2007). Note, on November 10, 2015, the EPA proposed revisions to the 2007 Exceptional Events Rule and issued a draft guidance document for wildfire ozone events. The EPA intends to finalize the rule revisions and guidance before the October 1, 2016, deadline for state and tribal designations recommendations.

<sup>9</sup> Data certification requirements can be found in 40 CFR, part 58.15. The EPA has developed guidance related to the data certification process that can be found at: <http://www3.epa.gov/ttn/amt/c/qacert.html>.

certification due date. The design values calculated using this data undergo review by the EPA regional offices, and the final design values are then posted on a public website.<sup>10</sup> Initial state and tribal designation recommendations due October 1, 2016, should focus on design values based on air quality data from 2013 to 2015; however, the EPA intends to make final designation decisions using design values based on the 2014 to 2016 certified air quality data.

In addition to identifying monitors where the most recent design values violate the NAAQS, examining historical ozone air quality measurement data (including previous design values) can improve our understanding of the nature of the ozone ambient air quality problem in an area and thereby, inform decisions regarding the nonattainment area boundary. Since ozone concentrations are substantially impacted by meteorological conditions, including local wind patterns and synoptic weather patterns, the frequency and spatial distribution of exceedances of the standards can vary from year-to-year. This can be revealed by examining how frequently exceedances of the standard have occurred at the monitor with the highest design value for the area and at other monitor locations in the area under consideration, and how the spatial pattern in ozone concentrations across the area varies over time. This information can help to identify spatial and temporal patterns in the air quality of a given area and, when combined with other information from the 5-factor review, can help identify nearby areas with emissions sources contributing to an area with a monitored violation.

## **2. Emissions and Emissions-Related Data**

The sources and levels of emissions of ozone-precursor pollutants are important factors in the initial area designations process. As noted above, ambient ozone is formed through complex atmospheric processes. Air quality in a nonattainment area is also typically the result of a combination of regional and local emissions. In the designations process, for each area with a violating monitor, the EPA evaluates the current emissions data from nearby counties to assess each county's potential contribution to ozone concentrations at the violating monitor(s) in the area under evaluation. It should be noted that while ozone can be transported many hundreds of miles and sources of emissions that are very distant from the potential nonattainment area may also contribute to monitored ozone levels, these far upwind emissions are not considered in the designation determination to be "nearby" sources.<sup>11</sup> Therefore, the evaluation of the area is also a means to differentiate between the impact of emissions from more distant sources and from sources in nearby areas that should be included as part of the designated nonattainment area. For initial area designations, we intend to examine current emissions of identified sources of NO<sub>x</sub> and VOC, as guided by the local conceptual description of NO<sub>x</sub>- and VOC-limited areas. The EPA expects that some local NO<sub>x</sub> and VOC emissions contributions from mobile and stationary sources and transport from nearby areas can contribute to higher ozone levels at the violating monitors. Analyses should include reviewing data from the latest NEI and other relevant sources, as available. The analysis should also include examining the magnitude of county-level emissions and the geographic locations of NO<sub>x</sub> and VOC sources.

Analyzing the magnitude and spatial extent of emissions provides information about potential spatial gradients in ozone precursor emissions. Combining these analyses (e.g., magnitude of emissions and point of release) with meteorological information can inform the evaluation of the degree of contribution from nearby areas. In addition, if the most recent emission inventories do not reflect conditions for the

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<sup>10</sup> Design values for ozone can be found at: <http://www3.epa.gov/airtrends/values.html>.

<sup>11</sup> The Court of Appeals for the D.C. Circuit upheld the EPA's interpretation of the term "nearby" as being reasonable and consistent with the statute. *Miss. Comm'n on Env'tl. Quality v. EPA*, 790 F.3d 138, 160 (D.C. Cir. 2015).



same time period as the air quality data being used to determine the nonattainment designation, then information provided on changes in emissions will be considered. These changes may include emissions reductions due to permanent and enforceable emissions controls and may include emissions increases from new sources or at existing sources.

The EPA believes that it will be appropriate to use 2011 NEI version 2 data because that will be the most recent national emissions inventory information available at the beginning of the designations process.<sup>12</sup> The NEI includes data, generally on an annual basis at the county level. Emissions from large stationary sources at a specific location are also available. More detailed inventories (higher resolution than county estimates) may also be available for some areas, although not in the NEI.<sup>13</sup> To supplement the NEI county-level data, the EPA will provide information that could be used to understand spatial allocation within a county including the location and magnitude of large point sources. Additionally, states and tribes may wish to review gridded emissions data, which are generally available at 12 km grid resolution. These data, which can be provided by the EPA, have been created to cover emissions levels in the contiguous 48 states for 2011. These gridded emissions data can be provided by the EPA on an annual basis or for shorter time periods such as the ozone season.

Additionally, states or their regional organizations may submit their own emissions information or versions of gridded emissions for more recent years.

#### *Population and degree of urbanization*

The EPA has consolidated population and degree of urbanization within the emissions and emissions-related data factor as these elements supplement and help to inform the analysis of emissions data. The EPA intends to provide data such as population by county and census tract. An analysis of population and degree of urbanization may provide indicators of the location of emissions-related activities within the county.

The EPA expects that states and tribes may have independently developed datasets to better inform these elements. The EPA believes that population information such as the location and recent trends in population growth and the patterns of residential and commercial development can serve as potential indicators of the probable location and magnitude of emissions sources that may contribute to ozone concentrations in a given nonattainment area.

#### *Traffic and commuting patterns*

The EPA recommends examining the location of major transportation arteries and information on traffic volume and commuting patterns in and around the area containing a violating monitor. This may include examining the number of commuters in each nearby county who drive to a county within the area that has a violating monitor, the percent of total commuters in each county who commute to other counties

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<sup>12</sup> The 2014 NEI may not be available for initial designation recommendations. If it becomes available, then it will be considered in lieu of the 2011 NEI.

<sup>13</sup> The EPA develops gridded emissions by applying temporal (e.g., seasonal variations in emissions as reported to the NEI) and spatial (e.g., incorporates latitude and longitude location information as reported to the NEI) adjustments to the county-based NEI estimates to produce the more finely resolved gridded emissions. These emissions are generally available at a 12 km resolution, but may be available at finer resolutions for certain localities that have been the focus of special modeling studies.

with violating monitors within the metropolitan area, and the total VMT for each county. Areas with higher VMT and commuting activity can be an indicator of the location of mobile source emissions that may contribute to ozone concentrations at the violating monitor.

The NEI is one source of the county-wide VMT data and facilitates relative comparisons of traffic and commuting patterns between counties in a larger area.<sup>14</sup> However, more detailed assessments provided by states or tribes could help to highlight the magnitude and location of emissions activity. The EPA will provide gridded VMT data; however, these estimates may not correspond directly with VMT data developed by state or local agencies.

### 3. Meteorology

Evaluation of meteorological data helps to assess the fate and transport of emissions contributing to ozone concentrations and to identify areas potentially contributing to the monitored violations. Results of meteorological data analysis may support determination of nonattainment area boundaries.

One basic type of meteorological analysis involves assessing potential source-receptor relationships in the area on days with high ozone concentrations using wind speed and wind direction data. A more sophisticated and accurate assessment involves modeling air parcel trajectories to help understand complex transport situations. The HYSPLIT (HYbrid Single-Particle Lagrangian Integrated Trajectory) modeling system may be useful for some areas to produce trajectories that illustrate the 3-dimensional paths traveled by air parcels to a violating monitor. The EPA will provide back trajectories for violating monitors, for each day of high ozone concentration (i.e., daily maximum 8 hour values that exceed the NAAQS) at those monitors. States or tribes can choose to do additional HYSPLIT modeling and guidance is provided below. If a trajectory model other than HYSPLIT is used, states or tribes should provide detailed information about the technique, how it is used, and why it is preferred over HYSPLIT. *Preparing and running a HYSPLIT modeling analysis*

Atmospheric trajectory models use meteorological data and mathematical equations to simulate 3-dimensional transport in the atmosphere. Generally, the position of particles or parcels of air with time are calculated based on meteorological data such as wind speed and direction, temperature, humidity, and pressure. Model results depend on the spatial and temporal resolution of the atmospheric data used, and also on the complexity of the model itself. The HYSPLIT model<sup>15</sup> is frequently used to produce trajectories for assessments associated with determining nonattainment area boundaries. HYSPLIT contains models for trajectory, dispersion, and deposition; however, analyses recommended here only use the trajectory component. The trajectory model, which uses existing meteorological forecast fields from regional or global models to compute advection (i.e., the rate of change of an atmospheric property caused by the horizontal movement of air) and stability, is designed to support a wide range of simulations related to the atmospheric transport of pollutants.

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<sup>14</sup> NEI county-level VMT estimates are developed in a top-down approach from Federal Highway Administration estimates of statewide VMT by road class that are allocated to counties based on surrogates. Accordingly, the NEI estimates do not always compare well to detailed area-specific studies that are developed in a more robust way (e.g., travel demand model data).

<sup>15</sup> <http://ready.arl.noaa.gov/HYSPLIT.php>

HYSPLIT trajectories may be produced for various combinations of time and locations. When HYSPLIT trajectories are produced for specific monitor locations for days of high ozone concentrations (e.g., daily maximum 8-hour values that exceed the NAAQS), the results illustrate the potential source region for the air parcel that affected the monitor on the day of the high concentration.

While HYSPLIT is a useful tool for identifying meteorological patterns associated with exceedance events, HYSPLIT trajectories alone do not conclusively indicate contribution to measured high concentrations of ozone. Therefore, they cannot be used in isolation to determine inclusion or exclusion of an area within a nonattainment boundary. While a HYSPLIT trajectory analysis alone cannot yield a conclusion that a particular region contributes to ozone concentrations, a set of HYSPLIT trajectories that show no wind flow from a particular region on any day with high ozone concentration measurements might provide support for discounting that region as contributing to ozone concentrations. HYSPLIT trajectories are very useful in combination with information on the location and magnitude of ozone precursor emissions sources.

A HYSPLIT backward trajectory, the most common trajectory used in assessments associated with determining nonattainment area boundaries, is usually depicted on a standard map as a single line extending in two dimensional (x,y) space from a starting point, regressing backward in time as the line extends from the starting point. An individual trajectory can have only one starting height; HYSPLIT can plot trajectories of different starting heights at the same latitude/longitude starting point on the same map, automatically using different colors for the different starting heights. HYSPLIT will also include a vertical plot of the trajectories in time, with colors corresponding to the same trajectory in the (x,y) plot. This display can be easily misinterpreted as having finer accuracy than the underlying model and data.

It is important to observe the overall size of the plot, its width and length in kilometers, and consider the size of an individual grid cell in the input meteorological data set. These input grid cells are usually 40 km in width and length, so the total area of a trajectory plot may be limited. It is also important to understand the trajectory line itself. The line thickness is predetermined as a user option, so its thickness does not imply coverage other than to represent the centerline of an air parcel's motion calculated to arrive at the starting location at the starting time. Uncertainties are clearly present in these results, and these uncertainties change with trajectory time and distance traveled. One should avoid concluding a region is not along a trajectory's path if the center line of that trajectory missed the region by a relatively small distance.

Detailed information for downloading, installing, and operating HYSPLIT can be found at these websites:

<http://ready.arl.noaa.gov/HYSPLIT.php>

[http://www.arl.noaa.gov/documents/reports/hysplit\\_user\\_guide.pdf](http://www.arl.noaa.gov/documents/reports/hysplit_user_guide.pdf)

<http://www.arl.noaa.gov/documents/reports/arl-224.pdf>

HYSPLIT's many setup options allow great flexibility and versatility. However, careful selection and recording of these options is necessary to provide reviewers the ability to reproduce the model results. The following paragraphs describe the options that should be recorded, at a minimum, to enable another party to reproduce a HYSPLIT model run.



Model Version. If the HYSPLIT trajectory is produced via the NOAA Air Resources Laboratory (ARL) website ([http://ready.arl.noaa.gov/HYSPLIT\\_traj.php](http://ready.arl.noaa.gov/HYSPLIT_traj.php)), note the "*Modified:*" date in the lower-left corner of the webpage, as well as the date the trajectory was produced. If the trajectory is produced using a stand-alone version of HYSPLIT, note the *release date*, which will be displayed after exiting the main graphical user interface (GUI) screen.

Basic Trajectory Information. Note the *starting time* (YY MM DD HR), the *duration of the trajectory* in hours, and whether the trajectory is *backward or forward*. Note the *latitude and longitude*, as well as the *starting height*, for each *starting location*. Starting height is given by default in meters above ground level (AGL) unless another option is selected. Starting heights are typically no less than 100 meters AGL to avoid direct interference of terrain, and are typically no greater than 1500 meters AGL to confine the air parcel within the mixed layer. Some trajectories can escape the mixed layer, and this result would be considered in the interpretation.

Starting height and starting location will identify the 3-dimensional location of the trajectory's latest endpoint in time if a backward trajectory is selected (i.e., the start of a trajectory going backward in time). Backward trajectories used in analyses associated with designations typically have a trajectory duration of 24 hours. Considering the geographic proximity of areas under consideration in ozone designations, air parcel locations within this proximity are almost always within the last 24 hours of travel to the trajectory endpoint. Air parcel locations more than 24 hours prior to trajectory end time are rarely found within this proximity.

Input Meteorological Data Set. Note the *input meteorological data set* used in the HYSPLIT model run. The *original file name* provides sufficient information to identify the data set.

Meteorological data fields to run the model are already available for access through the HYSPLIT menu system, or by direct FTP from ARL. The ARL web server contains several meteorological model data sets already converted into a HYSPLIT compatible format in the public directories. Direct access via FTP to these data files is built into HYSPLIT's graphical user interface. The data files are automatically updated on the server with each new forecast cycle. Only an email address is required for the password to access the server. The ARL analysis data archive consists of output from the Global Data Analysis System (GDAS) and the NAM Data Analysis System (NDAS - previously called EDAS) covering much of North America. Both data archives are available from 1997 in semi-monthly files (SM). The EDAS was saved at 80 km resolution every 3-hours through 2003, and then at 40 km resolution starting in 2004. Detailed information on all meteorological data available for use in HYSPLIT can be found in the HYSPLIT4 Users Guide.<sup>16</sup>

It is possible to run the stand-alone HYSPLIT program on user-supplied meteorological data. This could be advantageous when the horizontal resolution or model physics used by ARL is inferior to other existing datasets. If a state or tribe chooses to use meteorological data not already on the ARL web server, the state or tribe should document the reason for this choice and should provide detailed information about the substituted meteorological dataset.

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<sup>16</sup> [http://www.arl.noaa.gov/documents/reports/hysplit\\_user\\_guide.pdf](http://www.arl.noaa.gov/documents/reports/hysplit_user_guide.pdf)

Vertical Motion Options. HYSPLIT can employ one of five different *methods for computing vertical motion*. A sixth method is to accept the vertical motion values contained within the input meteorological data set, effectively using the vertical motion method used by the meteorological model that created the data set. In a typical HYSPLIT application, EPA selects the option to accept the vertical motion values contained within the input meteorological data set. The user should note which method was selected as well as the value chosen for *the top of the model*, in meters AGL.

Trajectory Display Options. The HYSPLIT trajectory model generates a text output file of end-point positions. The end-point position file is processed by another HYSPLIT module to produce a Postscript display file or output files in other display formats. Some parameters, such as map projection and size, can be automatically computed based on the location and length of the trajectory, or they can be manually set by the user. While these display options do not directly affect the trajectory information itself, noting these options will eliminate possible misinterpretation of identical trajectories because of differing display options. An important display option is the choice of *vertical coordinate*, usually set to meters AGL for these assessments.

#### **4. Geography/topography**

Consideration of geography or topography can provide additional information relevant to defining nonattainment area boundaries. Analyses should examine the physical features of the land that might define the airshed. Mountains or other physical features may influence the fate and transport of emissions as well as the formation and distribution of ozone concentrations. For example, valley-type topographical features can cause local stagnation episodes where vertical temperature inversions effectively “trap” air pollution. Under these conditions, emissions can accumulate leading to periods of elevated ozone concentrations. These inversions may be limited in extent and, therefore, the areas with inversions may need to be separated from areas at altitudes above the top of the inversion layer in locations where exceedances are associated with this type of event. Conversely, higher altitude mountaintop sites might experience a greater influence from long range transport and associated transport episodes in comparison to nearby areas at a lower altitude. Similarly, the absence of any such geographic or topographic features may also be a relevant consideration in selecting boundaries for a given violating area.

#### **5. Jurisdictional boundaries**

Once the geographic extent of the violating area and the nearby area contributing to violations is determined, existing jurisdictional boundaries may be considered for the purposes of providing a clearly defined legal boundary and carrying out the air quality planning and enforcement functions for nonattainment areas. Examples of jurisdictional boundaries include, but are not limited to: counties, air districts, areas of Indian country, metropolitan planning organizations, and existing nonattainment areas. If an existing jurisdictional boundary is used to help define the nonattainment area, it must encompass all of the area that has been identified as meeting the nonattainment definition. Where existing jurisdictional boundaries are not adequate to describe the nonattainment area, other clearly defined and permanent landmarks or geographic coordinates should be used.

## Weight-of-Evidence Analysis Based on the Five Factors

In making designations recommendations for violating areas or contributing areas, and the nonattainment area boundaries for such areas, the EPA recommends that states and tribes consider the five recommended factors together and use a weight-of-evidence approach for this analysis. As explained above, the starting point for evaluating the factors is the air quality analysis. Of particular importance are the location(s) of the violating monitor(s) based on 2013-2015 data<sup>17</sup> and the characteristics of those violations. Once the characteristics of the violations are established, one can begin to assess which nearby emissions sources and source regions may have contributed to those violations. This contribution evaluation should generally consider the location and magnitude of emissions, and the potential for these emissions to contribute to the ambient conditions at the violating monitors as informed by the meteorological and geographical/topographical analysis factors. The guiding principle for this evaluation should be to include, within the boundaries of the nonattainment area, nearby areas with emissions of ozone precursors (NO<sub>x</sub> and VOC) that contribute to the violating monitor on days that exceed the NAAQS. The final factor, jurisdictional boundaries, should be considered to refine the nonattainment area boundary to ensure meaningful air quality planning and regulation during the NAAQS implementation phase. As in prior designations for ozone NAAQS, the EPA believes that it is appropriate to use already-established air planning boundaries where possible, to assure continued effective planning and implementation.

The EPA believes that the 5-factor analysis described here is generally comprehensive and intends to use the weight-of-evidence approach based on these five factors in establishing the nonattainment boundaries for the 2015 ozone NAAQS. As noted earlier, the EPA intends to provide an Ozone Designations Mapping Tool to assist air agencies in developing their area designation and nonattainment boundary recommendations and to provide the relevant data to facilitate the analyses. The EPA will make the Ozone Designations Mapping Tool available on the ozone designations website.

The EPA also recognizes the potential value of additional data or methodologies not already specified in this guidance that states or tribes may elect to submit to qualitatively describe or quantify the relative contributions from contributing areas to violating monitors. In some cases, these supplemental methodologies (e.g., source apportionment modeling) may be used to synthesize the various factors, such as air quality, emissions, and meteorological data into quantitative estimates of the contributions from specific areas.

## Source Apportionment Modeling

Source apportionment modeling refers to an augmented instrumentation of traditional regional photochemical Eulerian models which allows the model to track the impacts of NO<sub>x</sub> and VOC emissions from user-defined source regions on predicted ozone concentrations in a particular grid cell. Emissions are tracked with source apportionment through ozone formation, transport, and deposition processes in the host photochemical model.<sup>18,19</sup> Source apportionment modeling combines into a single analysis

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<sup>17</sup> The EPA intends to consider 2014-2016 data as soon as these data are available.

<sup>18</sup> Dunker, A. M., Yarwood, G., Ortmann, J. P., and Wilson, G. M. Comparison of source apportionment and source sensitivity of ozone in a three-dimensional air quality model, *Environ. Sci. Technol.*, 36, 2953–2964, 2002.

<sup>19</sup> Kwok, R.H.F, Baker, K.R., Napelenok S.L., Tonnesen, G.S. Photochemical grid model implementation and application of VOC, NO<sub>x</sub>, and O<sub>3</sub> source apportionment, *Geoscientific Model Development*, 8(1), 99-114, 2015.

several of the factors that the EPA believes are important for determining nonattainment area boundaries: air quality data, emissions, meteorology, and geography/topography. Consequently, this modeling may help identify possible areas for inclusion in the nonattainment area because of their contribution to violations in nearby areas with violating monitors.

The EPA does not require states or tribes to conduct source apportionment modeling as part of the initial area designations process for the 2015 ozone NAAQS. However, some states used source apportionment modeling in their boundary determinations for the 2008 ozone NAAQS. The EPA is not producing source apportionment modeling assessments for any areas as part of the initial area designations process for the 2015 NAAQS. Like other aspects of the factor analyses, source apportionment modeling produces information that can help to determine potential boundaries for the area that should be designated nonattainment. Where provided by states or tribes, source apportionment results will be considered as just one part of an overall assessment of the potential nonattainment area boundaries. The EPA recognizes that while there are uncertainties associated with interpreting source apportionment outputs, it can be a useful technique for comparing the relative contribution of individual county emissions of ozone precursor emissions in a more sophisticated manner.

If a state chooses to conduct source apportionment modeling, the EPA recommends that model episodes are of sufficient duration to capture the entire range of meteorological and emissions conditions that can lead to ozone violations in a particular area. Further, we recommend that states and tribes follow the relevant EPA guidance for photochemical modeling attainment demonstrations<sup>20</sup> when establishing their source apportionment modeling platform. In establishing the parameters of a source apportionment modeling exercise, the violating monitor(s) would typically comprise the receptor(s) in the analysis. When summarizing the outputs from the source apportionment modeling, it is suggested that the relative contributions from nearby source regions be compared against one another. It is expected that the focus of the source apportionment modeling would be identifying each source region's contribution to ozone levels near or exceeding the level of the ozone NAAQS. While the EPA does not believe it is appropriate to establish an *a priori* threshold contribution level, a relative comparison of the modeled contribution of each source region should reveal where there are potential contributing sources that should be included within the nonattainment area.

## Rural Transport Areas

Section 182(h) of the CAA identifies a category of ozone nonattainment areas referred to as rural transport areas (RTAs). An RTA is treated as a Marginal area for purposes of ozone-related planning and control requirements, regardless of the area's classification. In order for an area to qualify as an RTA, the nonattainment area must meet two criteria. First, the nonattainment area cannot be adjacent to, or include any part of a metropolitan statistical area, as defined by the Office of Management and Budget. Second, the NO<sub>x</sub> and VOC emissions from sources within the area cannot make a significant contribution to ozone concentrations in the area itself, or in other areas. The first criterion was discussed earlier in this guidance memo. This portion of the document provides guidance to states and tribes regarding the information that should be submitted to the EPA as part of a demonstration for the second criterion. The EPA believes that a multi-factor, weight-of-evidence approach is needed to demonstrate

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<sup>20</sup> Draft Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, PM<sub>2.5</sub>, and Regional Haze. December 2014. Located at: [http://www3.epa.gov/ttn/scram/guidance/guide/Draft\\_O3-PM-RH\\_Modeling\\_Guidance-2014.pdf](http://www3.epa.gov/ttn/scram/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf).

that emissions within a potential RTA do not contribute significantly to the local ozone nonattainment problem or to ozone nonattainment downwind. The factors are similar in nature to the ones described above to guide development of nonattainment designation boundaries: air quality data, emissions estimates, meteorological transport patterns, and geography/topography.

In most instances, the first step in demonstrating that the NO<sub>x</sub> and VOC emissions in a potential RTA do not significantly contribute to ozone in the area itself is the development of a conceptual description of the nature of ozone exceedances in the area.<sup>21</sup> This conceptual description should summarize the spatial and temporal patterns of ozone exceedances in the area and begin to identify hypotheses as to which processes and sources are likely most responsible for those high ozone values. To the extent that the conceptual description suggests that transport from upwind areas is largely responsible for the local ozone problem, the RTA demonstration should then further analyze existing ambient monitoring data, meteorological transport patterns, and local and regional emissions estimates to construct a weight-of-evidence argument that concludes the upwind contributions dominate any local contributions.

When compiling a weight-of-evidence based RTA demonstration, it may be valuable to consider an analysis of regional surface ozone monitoring data to see if there is a clear signal of an ozone plume being generated over an upwind area and being transported downwind as the day proceeds, reaching the potential RTA area after the time in which local photochemical production of ozone would have ceased. It also may be useful to look at any available ozone precursor data in or near the local area as a way to assess the chemical nature of a particular air mass. One indication of a photochemically-aged ozone plume that was likely formed from upwind emissions and transported away from its source origin, would be situations in which high ambient ozone and total reactive nitrogen (NO<sub>y</sub>) values were observed in locations with relatively low ambient concentrations of NO<sub>x</sub>. In other cases, there may be data available about the 3-dimensional chemical state of the atmosphere (e.g., from aircraft, satellites, or other relevant instrumentation) that can help characterize the role of transported ozone from upwind areas.

In terms of the meteorological factor, using HYSPLIT to estimate the back trajectories of air parcels on high ozone days can provide valuable information about the transport path and potential origin of the ozone pollution. We expect that for most areas that would qualify for treatment as an RTA, most, if not all, back trajectories on high ozone days would suggest long-path trajectories with source origins well away from the local area and with little potential for recirculation of the local emissions.

Finally, for the emissions factor, the relative magnitude of local emissions in any potential RTA is also a key consideration in determining if local sources contribute significantly to the ozone problem in the area. If the NO<sub>x</sub> and VOC inventories for a particular area are appreciably less than those for other areas for which there is evidence demonstrating contribution to the ozone nonattainment problem (i.e., from the ambient and meteorological analyses), this provides support for concluding that the transport component is overwhelming any local ozone production. A simple approach to assessing the potential importance of local emissions is to compile county-level emissions inventory estimates for each county potentially along the trajectories that are expected to contribute to ozone in the potential RTA. If the emissions from upwind contributing counties are substantially larger than what is being emitted locally, then this suggests that the impact of the local emissions may not be significant. The EPA recommends that any comparative assessments of emissions be based on the most current available inventories.

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<sup>21</sup> Chapter 2.1 of EPA's Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, PM<sub>2.5</sub>, and Regional Haze has a detailed description of how to develop a sound conceptual description of an air quality problem. [http://www3.epa.gov/ttn/scram/guidance/guide/Draft\\_O3-PM-RH\\_Modeling\\_Guidance-2014.pdf](http://www3.epa.gov/ttn/scram/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf).



It is also possible to assess the contribution of local NO<sub>x</sub> and VOC emissions to the ozone in the area using photochemical air quality modeling. “Zero-out” modeling can provide an estimate of the total local impact by calculating the difference between the model estimates from a base case run and the estimates from a simulation in which the man-made emissions of NO<sub>x</sub> and VOC are removed from the potential RTA. If the response of the model is small (i.e., even with zero local emissions, there is still a local ozone problem due to transport), it would support a determination that local emissions sources make a small contribution to ozone concentrations in the area. Additionally, source apportionment modeling can be used to estimate the contributions of user-defined source regions (or source categories) to total modeled ozone in an area. These types of modeling analyses can be resource-intensive and the EPA does not expect areas to rely on these models unless they have already been completed for other purposes. In some cases, there may be existing regional or national modeling simulations that can be leveraged to support an RTA demonstration. States and tribes are encouraged to consult with their EPA regional office on potentially available information.

The analyses described above focus on showing that local emissions do not significantly impact high ozone in the local area. Similar analyses would be appropriate to demonstrate that local emissions do not significantly impact ozone concentrations in other areas. It is unrealistic to expect that a state or tribe could analyze impacts on every possible downwind area. Instead, we recommend that the state or tribe consider the effects of local emissions on the nearest potential nonattainment areas, in a qualitative sense using some of the data analyses described above.

In general, the EPA believes the geographical restrictions of section 182(h)(1) will limit the number of areas eligible for treatment as an RTA. States or tribes requesting that the EPA treat an ozone nonattainment area as an RTA are encouraged to conduct the technical analyses discussed above as part of a multi-factor, weight-of-evidence demonstration. Documentation that describes each analysis performed and the aggregate determination that emissions in the candidate area do not make a significant contribution to ozone concentrations in that area or in other downwind (current or potential) nonattainment areas should be submitted to the appropriate EPA regional office. Any state or tribe seeking an RTA determination for an area is encouraged to work closely with the appropriate EPA regional office to coordinate the analytical plan for such a demonstration.

**To:** Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Rave, Norman (ENRD)  
**Sent:** Wed 7/12/2017 7:09:39 PM  
**Subject:** FW: American Lung Ass'n v. EPA, No. 17-1172 (D.C. Cir.)--Motion for summary vacatur or stay  
[Vol II Addendum.pdf](#)

Norman Rave

U.S. Dept. of Justice

Environmental Defense Section

P.O. Box 7611

Washington, D.C. 20044

(202) 616-7568

**From:** Seth Johnson [mailto:sjohnson@earthjustice.org]  
**Sent:** Wednesday, July 12, 2017 3:04 PM  
**To:** Lipshultz, Jon (ENRD) <JLipshultz@ENRD.USDOJ.GOV>  
**Cc:** Rave, Norman (ENRD) <NRave@ENRD.USDOJ.GOV>  
**Subject:** RE: American Lung Ass'n v. EPA, No. 17-1172 (D.C. Cir.)--Motion for summary vacatur or stay

Addendum email 2/3.

Seth

**From:** Seth Johnson  
**Sent:** Wednesday, July 12, 2017 3:04 PM  
**To:** 'Lipshultz, Jon (ENRD)'  
**Cc:** 'Rave, Norman (ENRD)'  
**Subject:** RE: American Lung Ass'n v. EPA, No. 17-1172 (D.C. Cir.)--Motion for summary vacatur or stay

Addendum email 1/3.

Seth

**From:** Seth Johnson  
**Sent:** Wednesday, July 12, 2017 3:03 PM  
**To:** Lipshultz, Jon (ENRD)  
**Cc:** 'Rave, Norman (ENRD)'  
**Subject:** American Lung Ass'n v. EPA, No. 17-1172 (D.C. Cir.)--Motion for summary vacatur or stay

Jack & Norman,

Attached please find the motion we just filed in the above-captioned case, which we also just filed today. For convenience, I also attach a scan of the court-stamped petition for review.

There is a sizable addendum accompanying the motion, so this email will be followed by 3 others. (In ECF, it's all one PDF file, but that was too big to email. The substance is identical.)

This email is to effectuate service of the motion on EPA.

Best,

Seth



Seth Johnson

Staff Attorney

Earthjustice Washington, DC, Office

1625 Massachusetts Ave., NW, Ste. 702

Washington, DC 20036

T: 202.667.4500 x5245 or 202.797.5245

F: 202.667.2356

[earthjustice.org](http://earthjustice.org)



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*delete the message and any attachments.*

**To:** Schwab, Justin[schwab.justin@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Smith, Kristi  
**Sent:** Wed 8/2/2017 3:12:14 PM  
**Subject:** RE: Notice-withdraw extension of O3D deadline 7-27-17 \_MMG edits.docx  
Notice-withdraw extension of O3D deadline 7-27-17 MMG edits + KMS.docx

Here is my proposed response to Mandy's comment. I'm fine with the other edit.

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* smith.kristi@epa.gov \* (202) 564-3068 \*

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-----Original Message-----

From: Schwab, Justin  
Sent: Wednesday, August 02, 2017 10:25 AM  
To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Smith, Kristi <Smith.Kristi@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>  
Subject: Notice-withdraw extension of O3D deadline 7-27-17 \_MMG edits.docx  
Importance: High

Redline attached. This has not yet received final approval. Please discuss with me before circulating outside EPA.

**To:** Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov];  
Smith, Kristi[Smith.Kristi@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Schwab, Justin  
**Sent:** Wed 8/2/2017 2:25:26 PM  
**Subject:** Notice-withdraw extension of O3D deadline 7-27-17 \_MMG edits.docx  
Notice-withdraw extension of O3D deadline 7-27-17 MMG edits.docx  
ATT00001.txt

Redline attached. This has not yet received  
final approval. Please discuss with me before circulating outside EPA.

**To:** Tierney, Jan[tierney.jan@epa.gov]  
**Cc:** Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Oldham, Carla  
**Sent:** Tue 8/1/2017 2:53:12 PM  
**Subject:** RE: RESPONSE NEEDED: Need OGC concurrence on FR notice to withdraw the 1-yr extension of O3D deadline  
Notice-withdraw extension of O3D deadline 7-28-17 draft.docx

Hi Jan,

Here's the current draft. It's the same as what went to OAR except that I added in some citations in a footnote and added a comma somewhere.

Carla Oldham  
US EPA Office of Air Quality Planning and Standards

109 TW Alexander Drive (C539-04)  
Research Triangle Park, NC 27711  
919-541-3347  
oldham.carla@epa.gov

**From:** Tierney, Jan  
**Sent:** Tuesday, August 01, 2017 10:43 AM  
**To:** Oldham, Carla <Oldham.Carla@epa.gov>  
**Cc:** Bianco, Karen <Bianco.Karen@epa.gov>  
**Subject:** RE: RESPONSE NEEDED: Need OGC concurrence on FR notice to withdraw the 1-yr extension of O3D deadline

Please send me a copy of the notice that you would like OGC to concur on.

**From:** Oldham, Carla  
**Sent:** Tuesday, August 01, 2017 10:40 AM  
**To:** Tierney, Jan <tierney.jan@epa.gov>  
**Cc:** Bianco, Karen <Bianco.Karen@epa.gov>  
**Subject:** RESPONSE NEEDED: Need OGC concurrence on FR notice to withdraw the 1-yr extension of O3D deadline  
**Importance:** High

Hi Jan,

We need OGC concurrence ASAP on the subject notice.

Last Friday, we sent the draft notice up to OAR for early review by Sarah Dunham and the politicals. We were just informed that they have no comments or edits at this time. We've been instructed to send the current draft up the signature chain. It's possible that they might choose to make edits once they receive the formal package as part of their review process.

Carla Oldham  
US EPA Office of Air Quality Planning and Standards

109 TW Alexander Drive (C539-04)  
Research Triangle Park, NC 27711  
919-541-3347  
[oldham.carla@epa.gov](mailto:oldham.carla@epa.gov)

**To:** Smith, Kristi[Smith.Kristi@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Mathias, Scott[Mathias.Scott@epa.gov]; Oldham, Carla[Oldham.Carla@epa.gov]; Jones, Rhea[Jones.Rhea@epa.gov]  
**From:** Wood, Anna  
**Sent:** Fri 7/28/2017 3:14:54 PM  
**Subject:** Fwd: Ozone designations deferral withdrawal

FYI

Sent from my iPhone

Begin forwarded message:

**From:** "Lewis, Josh" <Lewis.Josh@epa.gov>  
**Date:** July 28, 2017 at 10:33:59 AM EDT  
**To:** "South, Peter" <South.Peter@epa.gov>  
**Cc:** "Wood, Anna" <Wood.Anna@epa.gov>, "Mathias, Scott" <Mathias.Scott@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>, "Page, Steve" <Page.Steve@epa.gov>  
**Subject:** Re: Ozone designations deferral withdrawal

Got it, thank you. Will share with sarah shortly

On Jul 28, 2017, at 10:27 AM, South, Peter <South.Peter@epa.gov> wrote:

Hi Josh,

Mike asked that I send you the attached O3 designations deferral withdrawal FRN and key messages document.

These documents were coordinated and reviewed by OGC and reflect OGC input and edits.

Thanks.

Pete South

OAR/OAQPS/IO

U.S. EPA

office: 919 541-5359

cell: 919 599-7213

<Key Messages on Notice-withdraw extension of O3D deadline 7-27-17 PM V  
2.docx>

<Notice-withdraw extension of O3D deadline 7-27-17 PM CLEAN draft.docx>

**To:** Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]  
**Cc:** Bianco, Karen[Bianco.Karen@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]  
**From:** Smith, Kristi  
**Sent:** Fri 7/28/2017 12:45:26 PM  
**Subject:** Fwd: Heads-up on FRN on Ozone designations deferral withdrawal  
[Key Messages on Notice-withdraw extension of O3D deadline 7-27-17 PM V 2.docx](#)  
[ATT00001.htm](#)  
[Notice-withdraw extension of O3D deadline 7-27-17 PM CLEAN draft.docx](#)  
[ATT00002.htm](#)

Lorie & Gautam -

Attached is the draft FR notice for the ozone extension withdrawal that OAQPS has routed to Sarah and Mandy, along with some key messages for communications. As I discussed with Lorie yesterday, we don't think this goes into messaging and possible future path as much as Justin had indicated, but we discussed it fully with OAQPS managers and staff. This is what they feel comfortable saying, and they want to hear from Mandy if more is needed. I'll also share this with Justin and let him know the same thing.

I'm out today. We're driving to Rehobeth this morning, so I will be available to talk if needed, but then I'm out of pocket from noon through the rest of the weekend.

Have a great weekend,  
Kristi

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* [smith.kristi@epa.gov](mailto:smith.kristi@epa.gov) \* (202) 564-3068\*

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

Begin forwarded message:

**From:** "Mathias, Scott" <[Mathias.Scott@epa.gov](mailto:Mathias.Scott@epa.gov)>  
**Date:** July 27, 2017 at 11:56:49 PM EDT  
**To:** "Smith, Kristi" <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>  
**Subject:** Fwd: Heads-up on FRN on Ozone designations deferral withdrawal

Begin forwarded message:

**From:** "Wood, Anna" <[Wood.Anna@epa.gov](mailto:Wood.Anna@epa.gov)>



**Date:** July 27, 2017 at 6:30:32 PM EDT

**To:** "Smith, Suzanne" <[Smith.Suzanne@epa.gov](mailto:Smith.Suzanne@epa.gov)>, "Bianco, Karen" <[Bianco.Karen@epa.gov](mailto:Bianco.Karen@epa.gov)>, "Tierney, Jan" <[tierney.jan@epa.gov](mailto:tierney.jan@epa.gov)>

**Cc:** "Mathias, Scott" <[Mathias.Scott@epa.gov](mailto:Mathias.Scott@epa.gov)>, "Oldham, Carla" <[Oldham.Carla@epa.gov](mailto:Oldham.Carla@epa.gov)>, "Jones, Rhea" <[Jones.Rhea@epa.gov](mailto:Jones.Rhea@epa.gov)>

**Subject:** FW: Heads-up on FRN on Ozone designations deferral withdrawal

FYI—thanks again for everyone's efforts on this—much appreciated!

**From:** Wood, Anna

**Sent:** Thursday, July 27, 2017 6:26 PM

**To:** Koerber, Mike <[Koerber.Mike@epa.gov](mailto:Koerber.Mike@epa.gov)>; South, Peter <[South.Peter@epa.gov](mailto:South.Peter@epa.gov)>

**Cc:** Page, Steve <[Page.Steve@epa.gov](mailto:Page.Steve@epa.gov)>; Michael Ling <[Ling.Michael@epa.gov](mailto:Ling.Michael@epa.gov)>; Oldham, Carla <[Oldham.Carla@epa.gov](mailto:Oldham.Carla@epa.gov)>; Cortelyou-Lee, Jan <[Cortelyou-Lee.Jan@epa.gov](mailto:Cortelyou-Lee.Jan@epa.gov)>; Mathias, Scott <[Mathias.Scott@epa.gov](mailto:Mathias.Scott@epa.gov)>; Jones, Rhea <[jones.rhea@epa.gov](mailto:jones.rhea@epa.gov)>

**Subject:** FW: Heads-up on FRN on Ozone designations deferral withdrawal

Per my earlier email, attached are the two documents for your review and transmittal to Sarah Dunham. These documents were coordinated and reviewed by OGC and reflect OGC input and edits. Please note that we intentionally did not include the points in the key messages piece re the Agency's plan going forward in the FRN. We think it is preferable to keep the FRN cleaner and more succinct and that this information is better suited for communications materials. Please let me know if you have any questions, thanks Anna

**From:** Wood, Anna

**Sent:** Thursday, July 27, 2017 5:46 PM

**To:** Koerber, Mike <[Koerber.Mike@epa.gov](mailto:Koerber.Mike@epa.gov)>; South, Peter <[South.Peter@epa.gov](mailto:South.Peter@epa.gov)>

**Cc:** Page, Steve <[Page.Steve@epa.gov](mailto:Page.Steve@epa.gov)>; 'Michael Ling' <[Ling.Michael@epa.gov](mailto:Ling.Michael@epa.gov)>; Cortelyou-Lee, Jan <[Cortelyou-Lee.Jan@epa.gov](mailto:Cortelyou-Lee.Jan@epa.gov)>

**Subject:** RE: Heads-up on FRN on Ozone designations deferral withdrawal

Adding Jan Cortelyou

**From:** Wood, Anna

**Sent:** Thursday, July 27, 2017 5:40 PM

**To:** Koerber, Mike <[Koerber.Mike@epa.gov](mailto:Koerber.Mike@epa.gov)>; South, Peter <[South.Peter@epa.gov](mailto:South.Peter@epa.gov)>

**Cc:** Page, Steve <[Page.Steve@epa.gov](mailto:Page.Steve@epa.gov)>; Michael Ling <[Ling.Michael@epa.gov](mailto:Ling.Michael@epa.gov)>

**Subject:** Heads-up on FRN on Ozone designations deferral withdrawal

Just a heads-up that tomorrow morning we will be sending to you for review and further transmittal to Sarah the referenced FRN and a key messages piece. Mike you have looked at these already and what we will be sending reflects edits/suggestions from OGC which Scott, Carla and I have reviewed. OGC is asking that these be transmitted to Sarah for her to provide to Mandy at some point tomorrow. Scott and I are out of the office tomorrow but are available on email. Carla is in the office in the morning and Michael Ling is acting DD for me. We have alerted Michael on this and he is available to assist you as well should anything come up. Please let me know if you have any questions. Thanks

Anna Marie Wood

Director, Air Quality Policy Division

OAQPS, U.S. EPA

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

(919) 541-3604

**To:** Smith, Suzanne[Smith.Suzanne@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]  
**Cc:** Mathias, Scott[Mathias.Scott@epa.gov]; Oldham, Carla[Oldham.Carla@epa.gov]; Jones, Rhea[Jones.Rhea@epa.gov]  
**From:** Wood, Anna  
**Sent:** Thur 7/27/2017 10:30:32 PM  
**Subject:** FW: Heads-up on FRN on Ozone designations deferral withdrawal  
Key Messages on Notice-withdraw extension of O3D deadline 7-27-17 PM V 2.docx  
Notice-withdraw extension of O3D deadline 7-27-17 PM CLEAN draft.docx

FYI—thanks again for everyone’s efforts on this—much appreciated!

**From:** Wood, Anna  
**Sent:** Thursday, July 27, 2017 6:26 PM  
**To:** Koerber, Mike <Koerber.Mike@epa.gov>; South, Peter <South.Peter@epa.gov>  
**Cc:** Page, Steve <Page.Steve@epa.gov>; Michael Ling <Ling.Michael@epa.gov>; Oldham, Carla <Oldham.Carla@epa.gov>; Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>; Jones, Rhea <jones.rhea@epa.gov>  
**Subject:** FW: Heads-up on FRN on Ozone designations deferral withdrawal

Per my earlier email, attached are the two documents for your review and transmittal to Sarah Dunham. These documents were coordinated and reviewed by OGC and reflect OGC input and edits. Please note that we intentionally did not include the points in the key messages piece re the Agency’s plan going forward in the FRN. We think it is preferable to keep the FRN cleaner and more succinct and that this information is better suited for communications materials. Please let me know if you have any questions, thanks Anna

**From:** Wood, Anna  
**Sent:** Thursday, July 27, 2017 5:46 PM  
**To:** Koerber, Mike <Koerber.Mike@epa.gov>; South, Peter <South.Peter@epa.gov>  
**Cc:** Page, Steve <Page.Steve@epa.gov>; 'Michael Ling' <Ling.Michael@epa.gov>; Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>  
**Subject:** RE: Heads-up on FRN on Ozone designations deferral withdrawal

Adding Jan Cortelyou

**From:** Wood, Anna  
**Sent:** Thursday, July 27, 2017 5:40 PM  
**To:** Koerber, Mike <Koerber.Mike@epa.gov>; South, Peter <South.Peter@epa.gov>

**Cc:** Page, Steve <[Page.Steve@epa.gov](mailto:Page.Steve@epa.gov)>; Michael Ling <[Ling.Michael@epa.gov](mailto:Ling.Michael@epa.gov)>  
**Subject:** Heads-up on FRN on Ozone designations deferral withdrawal

Just a heads-up that tomorrow morning we will be sending to you for review and further transmittal to Sarah the referenced FRN and a key messages piece. Mike you have looked at these already and what we will be sending reflects edits/suggestions from OGC which Scott, Carla and I have reviewed. OGC is asking that these be transmitted to Sarah for her to provide to Mandy at some point tomorrow. Scott and I are out of the office tomorrow but are available on email. Carla is in the office in the morning and Michael Ling is acting DD for me. We have alerted Michael on this and he is available to assist you as well should anything come up. Please let me know if you have any questions. Thanks

Anna Marie Wood

Director, Air Quality Policy Division

OAQPS, U.S. EPA

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

(919) 541-3604

**To:** Smith, Kristi[Smith.Kristi@epa.gov]  
**Cc:** Tierney, Jan[tierney.jan@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Mathias, Scott[Mathias.Scott@epa.gov]; Oldham, Carla[Oldham.Carla@epa.gov]  
**From:** Wood, Anna  
**Sent:** Thur 7/27/2017 10:16:11 PM  
**Subject:** RE: revised clean versions of FR & key points  
Key Messages on Notice-withdraw extension of O3D deadline 7-27-17 PM RLSO.docx

Thanks Kristi for your quick work on this—we took a look at the key messages and made a couple of minor edits (see attached). We are sending forward the slightly edited key messages piece and the FRN through our IO this evening and asking that they share it with Sarah and Mandy to get their feedback. Hope you have a fabulous new hairdo!

**From:** Smith, Kristi  
**Sent:** Thursday, July 27, 2017 5:47 PM  
**To:** Wood, Anna <Wood.Anna@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>; Oldham, Carla <Oldham.Carla@epa.gov>  
**Cc:** Tierney, Jan <tierney.jan@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>  
**Subject:** revised clean versions of FR & key points

Here are clean versions of both documents. I'm off to a hair appt but will have my phone with me for urgent matters.

Thanks for all the hard work on trying to get a document without clear guidance.

- Kristi

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* [smith.kristi@epa.gov](mailto:smith.kristi@epa.gov) \* (202) 564-3068 \*

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

**To:** Wood, Anna[Wood.Anna@epa.gov]; Mathias, Scott[Mathias.Scott@epa.gov]; Oldham, Carla[Oldham.Carla@epa.gov]  
**Cc:** Tierney, Jan[tierney.jan@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Smith, Kristi  
**Sent:** Thur 7/27/2017 9:47:17 PM  
**Subject:** revised clean versions of FR & key points  
[Key Messages on Notice-withdraw extension of O3D deadline 7-27-17 PM Clean.docx](#)  
[Notice-withdraw extension of O3D deadline 7-27-17 PM CLEAN draft.docx](#)

Here are clean versions of both documents. I'm off to a hair appt but will have my phone with me for urgent matters.

Thanks for all the hard work on trying to get a document without clear guidance.

- Kristi

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* smith.kristi@epa.gov \* (202) 564-3068 \*

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**To:** Smith, Kristi[Smith.Kristi@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Tierney, Jan  
**Sent:** Thur 7/27/2017 8:38:56 PM  
**Subject:** FW: O3D extension withdrawal: draft FRN & Key Messages  
Extension Withdrawal Comm PlanV2 ogc.docx

Probably not worth the time until we nail down the FR and messaging pieces, but I did make a few edits to the comm plan. I would assume that the political folks would want some or all of the messaging points in here but I didn't attempt to add any of that.

I need to leave on time today (5:15) because I have a pilates class tonight but could participate in any meeting before then.

**From:** Cortelyou-Lee, Jan  
**Sent:** Thursday, July 27, 2017 4:28 PM  
**To:** Mathias, Scott <Mathias.Scott@epa.gov>; Tierney, Jan <tierney.jan@epa.gov>; Smith, Kristi <Smith.Kristi@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Oldham, Carla <Oldham.Carla@epa.gov>; Jones, Rhea <Jones.Rhea@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>  
**Cc:** Long, Pam <Long.Pam@epa.gov>  
**Subject:** RE: O3D extension withdrawal: draft FRN & Key Messages

Here is a revised Comms Plan incorporating these comments. I don't think we need a fact sheet for this action but will post the statement on the web along with the pre-publication version of the notice when it is signed.

Jan Cortelyou-Lee

US Environmental Protection Agency

Office of Air Quality Planning and Standards

MD-C404-03

109 TW Alexander Drive

Research Triangle Park, NC 27709

Desk: 919-541-5393

Cell: 919-368-5734

**From:** Mathias, Scott

**Sent:** Thursday, July 27, 2017 4:17 PM

**To:** Tierney, Jan <[tierney.jan@epa.gov](mailto:tierney.jan@epa.gov)>; Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>; Koerber, Mike <[Koerber.Mike@epa.gov](mailto:Koerber.Mike@epa.gov)>; Oldham, Carla <[Oldham.Carla@epa.gov](mailto:Oldham.Carla@epa.gov)>; Jones, Rhea <[Jones.Rhea@epa.gov](mailto:Jones.Rhea@epa.gov)>; Wood, Anna <[Wood.Anna@epa.gov](mailto:Wood.Anna@epa.gov)>; Cortelyou-Lee, Jan <[Cortelyou-Lee.Jan@epa.gov](mailto:Cortelyou-Lee.Jan@epa.gov)>; Bianco, Karen <[Bianco.Karen@epa.gov](mailto:Bianco.Karen@epa.gov)>

**Cc:** Long, Pam <[Long.Pam@epa.gov](mailto:Long.Pam@epa.gov)>

**Subject:** RE: O3D extension withdrawal: draft FRN & Key Messages

I'm not sure what to do with this one. We've got many cooks in the kitchen and they are not all trying to make the same dish.....and who even knows if it is something that Mandy et al. would even eat. To come to consensus on this piece will require a meeting, I think.

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310**

**From:** Tierney, Jan

**Sent:** Thursday, July 27, 2017 4:12 PM

**To:** Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>; Mathias, Scott <[Mathias.Scott@epa.gov](mailto:Mathias.Scott@epa.gov)>; Koerber, Mike <[Koerber.Mike@epa.gov](mailto:Koerber.Mike@epa.gov)>; Oldham, Carla <[Oldham.Carla@epa.gov](mailto:Oldham.Carla@epa.gov)>; Jones, Rhea <[Jones.Rhea@epa.gov](mailto:Jones.Rhea@epa.gov)>; Wood, Anna <[Wood.Anna@epa.gov](mailto:Wood.Anna@epa.gov)>; Cortelyou-Lee, Jan <[Cortelyou-Lee.Jan@epa.gov](mailto:Cortelyou-Lee.Jan@epa.gov)>; Bianco, Karen <[Bianco.Karen@epa.gov](mailto:Bianco.Karen@epa.gov)>

**Cc:** Long, Pam <[Long.Pam@epa.gov](mailto:Long.Pam@epa.gov)>

**Subject:** RE: O3D extension withdrawal: draft FRN & Key Messages

Attached are OGC's edits/comments on the key messages piece

**From:** Smith, Kristi



**Sent:** Thursday, July 27, 2017 3:46 PM

**To:** Mathias, Scott <[Mathias.Scott@epa.gov](mailto:Mathias.Scott@epa.gov)>; Koerber, Mike <[Koerber.Mike@epa.gov](mailto:Koerber.Mike@epa.gov)>; Oldham, Carla <[Oldham.Carla@epa.gov](mailto:Oldham.Carla@epa.gov)>; Jones, Rhea <[Jones.Rhea@epa.gov](mailto:Jones.Rhea@epa.gov)>; Wood, Anna <[Wood.Anna@epa.gov](mailto:Wood.Anna@epa.gov)>; Cortelyou-Lee, Jan <[Cortelyou-Lee.Jan@epa.gov](mailto:Cortelyou-Lee.Jan@epa.gov)>; Tierney, Jan <[tierney.jan@epa.gov](mailto:tierney.jan@epa.gov)>; Bianco, Karen <[Bianco.Karen@epa.gov](mailto:Bianco.Karen@epa.gov)>

**Cc:** Long, Pam <[Long.Pam@epa.gov](mailto:Long.Pam@epa.gov)>

**Subject:** RE: O3D extension withdrawal: draft FRN & Key Messages

Here is OGC's review of the FR notice. We've included comment bubbles to explain all of our suggested changes.

We'll send the key messages piece in just a moment (I'm turning to it now).

Do we want to set up a call to touch base at 4:30 or 5?

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* [smith.kristi@epa.gov](mailto:smith.kristi@epa.gov) \* (202) 564-3068 \*

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**From:** Mathias, Scott

**Sent:** Thursday, July 27, 2017 12:30 PM

**To:** Koerber, Mike <[Koerber.Mike@epa.gov](mailto:Koerber.Mike@epa.gov)>; Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>; Oldham, Carla <[Oldham.Carla@epa.gov](mailto:Oldham.Carla@epa.gov)>; Jones, Rhea <[Jones.Rhea@epa.gov](mailto:Jones.Rhea@epa.gov)>; Wood, Anna <[Wood.Anna@epa.gov](mailto:Wood.Anna@epa.gov)>; Cortelyou-Lee, Jan <[Cortelyou-Lee.Jan@epa.gov](mailto:Cortelyou-Lee.Jan@epa.gov)>; Tierney, Jan <[tierney.jan@epa.gov](mailto:tierney.jan@epa.gov)>

**Cc:** Long, Pam <[Long.Pam@epa.gov](mailto:Long.Pam@epa.gov)>

**Subject:** O3D extension withdrawal: draft FRN & Key Messages

**Importance:** High

All,

Attached is the latest draft of the FRN and a new document containing Key Messages that the administration may want to use regarding this action and the broader context of ozone NAAQS implementation.

After discussions this morning, OAQPS is recommending that any embellishments on the core elements of the withdrawal action be accomplished in communications regarding the action, rather than within the action itself. This Key Messages draft draws from the language in the 7/24/2017 draft of the “Report to Congress on Administrative Options to Enable States to Enter into Cooperative Agreements to Provide Regulatory Relief,” and ultimately care should be taken to ensure that these messages continue to be consistent as both documents move toward final.

Please review ASAP and let us know if there is anything we else we might add or say differently, and if you have ideas about where these key messages would go (e.g., communications Q&A, desk statement, fact sheet, press release, etc.).

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310**

**To:** Mathias, Scott[Mathias.Scott@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]; Oldham, Carla[Oldham.Carla@epa.gov]; Jones, Rhea[Jones.Rhea@epa.gov]; Wood, Anna[Wood.Anna@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]  
**Cc:** Long, Pam[Long.Pam@epa.gov]  
**From:** Cortelyou-Lee, Jan  
**Sent:** Thur 7/27/2017 8:27:53 PM  
**Subject:** RE: O3D extension withdrawal: draft FRN & Key Messages  
[Extension Withdrawal Comm PlanV2.docx](#)

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Jan Cortelyou-Lee

US Environmental Protection Agency

Office of Air Quality Planning and Standards

MD-C404-03

109 TW Alexander Drive

Research Triangle Park, NC 27709

Desk: 919-541-5393

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**Cc:** Long, Pam <Long.Pam@epa.gov>

**Subject:** RE: O3D extension withdrawal: draft FRN & Key Messages

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**To:** Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>; Mathias, Scott <[Mathias.Scott@epa.gov](mailto:Mathias.Scott@epa.gov)>; Koerber, Mike <[Koerber.Mike@epa.gov](mailto:Koerber.Mike@epa.gov)>; Oldham, Carla <[Oldham.Carla@epa.gov](mailto:Oldham.Carla@epa.gov)>; Jones, Rhea <[Jones.Rhea@epa.gov](mailto:Jones.Rhea@epa.gov)>; Wood, Anna <[Wood.Anna@epa.gov](mailto:Wood.Anna@epa.gov)>; Cortelyou-Lee, Jan <[Cortelyou-Lee.Jan@epa.gov](mailto:Cortelyou-Lee.Jan@epa.gov)>; Bianco, Karen <[Bianco.Karen@epa.gov](mailto:Bianco.Karen@epa.gov)>  
**Cc:** Long, Pam <[Long.Pam@epa.gov](mailto:Long.Pam@epa.gov)>  
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**From:** Smith, Kristi  
**Sent:** Thursday, July 27, 2017 3:46 PM  
**To:** Mathias, Scott <[Mathias.Scott@epa.gov](mailto:Mathias.Scott@epa.gov)>; Koerber, Mike <[Koerber.Mike@epa.gov](mailto:Koerber.Mike@epa.gov)>; Oldham, Carla <[Oldham.Carla@epa.gov](mailto:Oldham.Carla@epa.gov)>; Jones, Rhea <[Jones.Rhea@epa.gov](mailto:Jones.Rhea@epa.gov)>; Wood, Anna <[Wood.Anna@epa.gov](mailto:Wood.Anna@epa.gov)>; Cortelyou-Lee, Jan <[Cortelyou-Lee.Jan@epa.gov](mailto:Cortelyou-Lee.Jan@epa.gov)>; Tierney, Jan <[tierney.jan@epa.gov](mailto:tierney.jan@epa.gov)>; Bianco, Karen <[Bianco.Karen@epa.gov](mailto:Bianco.Karen@epa.gov)>  
**Cc:** Long, Pam <[Long.Pam@epa.gov](mailto:Long.Pam@epa.gov)>  
**Subject:** RE: O3D extension withdrawal: draft FRN & Key Messages

Here is OGC's review of the FR notice. We've included comment bubbles to explain all of our suggested changes.

We'll send the key messages piece in just a moment (I'm turning to it now).

Do we want to set up a call to touch base at 4:30 or 5?

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* [smith.kristi@epa.gov](mailto:smith.kristi@epa.gov) \* (202) 564-3068 \*

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

**From:** Mathias, Scott

**Sent:** Thursday, July 27, 2017 12:30 PM

**To:** Koerber, Mike <[Koerber.Mike@epa.gov](mailto:Koerber.Mike@epa.gov)>; Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>; Oldham, Carla <[Oldham.Carla@epa.gov](mailto:Oldham.Carla@epa.gov)>; Jones, Rhea <[Jones.Rhea@epa.gov](mailto:Jones.Rhea@epa.gov)>; Wood, Anna <[Wood.Anna@epa.gov](mailto:Wood.Anna@epa.gov)>; Cortelyou-Lee, Jan <[Cortelyou-Lee.Jan@epa.gov](mailto:Cortelyou-Lee.Jan@epa.gov)>; Tierney, Jan <[tierney.jan@epa.gov](mailto:tierney.jan@epa.gov)>

**Cc:** Long, Pam <[Long.Pam@epa.gov](mailto:Long.Pam@epa.gov)>

**Subject:** O3D extension withdrawal: draft FRN & Key Messages

**Importance:** High

All,

Attached is the latest draft of the FRN and a new document containing Key Messages that the administration may want to use regarding this action and the broader context of ozone NAAQS implementation.

After discussions this morning, OAQPS is recommending that any embellishments on the core elements of the withdrawal action be accomplished in communications regarding the action, rather than within the action itself. This Key Messages draft draws from the language in the 7/24/2017 draft of the "Report to Congress on Administrative Options to Enable States to Enter into Cooperative Agreements to Provide Regulatory Relief," and ultimately care should be taken to ensure that these messages continue to be consistent as both documents move toward final.

Please review ASAP and let us know if there is anything we else we might add or say differently, and if you have ideas about where these key messages would go (e.g., communications Q&A,

desk statement, fact sheet, press release, etc.).

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310**

**To:** Smith, Kristi[Smith.Kristi@epa.gov]; Mathias, Scott[Mathias.Scott@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]; Oldham, Carla[Oldham.Carla@epa.gov]; Jones, Rhea[Jones.Rhea@epa.gov]; Wood, Anna[Wood.Anna@epa.gov]; Cortelyou-Lee, Jan[Cortelyou-Lee.Jan@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]  
**Cc:** Long, Pam[Long.Pam@epa.gov]  
**From:** Tierney, Jan  
**Sent:** Thur 7/27/2017 8:11:39 PM  
**Subject:** RE: O3D extension withdrawal: draft FRN & Key Messages  
Key Messages on Notice-withdraw extension of O3D deadline 7-27-17 + OGC.docx

Attached are OGC's edits/comments on the key messages piece

**From:** Smith, Kristi  
**Sent:** Thursday, July 27, 2017 3:46 PM  
**To:** Mathias, Scott <Mathias.Scott@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Oldham, Carla <Oldham.Carla@epa.gov>; Jones, Rhea <Jones.Rhea@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>; Tierney, Jan <tierney.jan@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>  
**Cc:** Long, Pam <Long.Pam@epa.gov>  
**Subject:** RE: O3D extension withdrawal: draft FRN & Key Messages

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**From:** Mathias, Scott

**Sent:** Thursday, July 27, 2017 12:30 PM

**To:** Koerber, Mike <Koerber.Mike@epa.gov>; Smith, Kristi <Smith.Kristi@epa.gov>; Oldham, Carla <Oldham.Carla@epa.gov>; Jones, Rhea <Jones.Rhea@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>; Tierney, Jan <tierney.jan@epa.gov>

**Cc:** Long, Pam <Long.Pam@epa.gov>

**Subject:** O3D extension withdrawal: draft FRN & Key Messages

**Importance:** High

All,

Attached is the latest draft of the FRN and a new document containing Key Messages that the administration may want to use regarding this action and the broader context of ozone NAAQS implementation.

After discussions this morning, OAQPS is recommending that any embellishments on the core elements of the withdrawal action be accomplished in communications regarding the action, rather than within the action itself. This Key Messages draft draws from the language in the 7/24/2017 draft of the “Report to Congress on Administrative Options to Enable States to Enter into Cooperative Agreements to Provide Regulatory Relief,” and ultimately care should be taken to ensure that these messages continue to be consistent as both documents move toward final.

Please review ASAP and let us know if there is anything we else we might add or say differently, and if you have ideas about where these key messages would go (e.g., communications Q&A, desk statement, fact sheet, press release, etc.).

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310**



**To:** Mathias, Scott[Mathias.Scott@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]; Oldham, Carla[Oldham.Carla@epa.gov]; Jones, Rhea[Jones.Rhea@epa.gov]; Wood, Anna[Wood.Anna@epa.gov]; Cortelyou-Lee, Jan[Cortelyou-Lee.Jan@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]  
**Cc:** Long, Pam[Long.Pam@epa.gov]  
**From:** Smith, Kristi  
**Sent:** Thur 7/27/2017 7:45:38 PM  
**Subject:** RE: O3D extension withdrawal: draft FRN & Key Messages  
Notice-withdraw extension of O3D deadline 7-27-17 OAQPS draft + OGC.docx

Here is OGC's review of the FR notice. We've included comment bubbles to explain all of our suggested changes.

We'll send the key messages piece in just a moment (I'm turning to it now).

Do we want to set up a call to touch base at 4:30 or 5?

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* smith.kristi@epa.gov \* (202) 564-3068 \*

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**From:** Mathias, Scott  
**Sent:** Thursday, July 27, 2017 12:30 PM  
**To:** Koerber, Mike <Koerber.Mike@epa.gov>; Smith, Kristi <Smith.Kristi@epa.gov>; Oldham, Carla <Oldham.Carla@epa.gov>; Jones, Rhea <Jones.Rhea@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>; Tierney, Jan <tierney.jan@epa.gov>  
**Cc:** Long, Pam <Long.Pam@epa.gov>  
**Subject:** O3D extension withdrawal: draft FRN & Key Messages  
**Importance:** High

All,

Attached is the latest draft of the FRN and a new document containing Key Messages that the administration may want to use regarding this action and the broader context of ozone NAAQS implementation.

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**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310**

**To:** Bianco, Karen[Bianco.Karen@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]  
**From:** Smith, Kristi  
**Sent:** Thur 7/27/2017 7:22:51 PM  
**Subject:** my review of ozone notice  
Notice-withdraw extension of O3D deadline 7-27-17 OAQPS draft + OGC.docx

I responded to a few of your comments in my review, so I wanted you to be able to look at it and raise any concerns with me before sending to OAQPS.

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* smith.kristi@epa.gov \* (202) 564-3068 \*

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**To:** Smith, Kristi[Smith.Kristi@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Tierney, Jan  
**Sent:** Thur 7/27/2017 5:13:43 PM  
**Subject:** key messages piece  
Key Messages on Notice-withdraw extension of O3D deadline 7-27-17 jmt.docx

I didn't look back at the FR notice since it presumably is unchanged. Here are a couple of edits/comments on the messaging piece, which seems to have a significant focus on background.

**To:** Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Smith, Kristi  
**Sent:** Thur 7/27/2017 4:46:09 PM  
**Subject:** FW: O3D extension withdrawal: draft FRN & Key Messages  
Notice-withdraw extension of O3D deadline 7-27-17 OAQPS draft.docx  
Key Messages on Notice-withdraw extension of O3D deadline 7-27-17.docx

They forgot to include you. You probably want to put your edits in this version.

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* smith.kristi@epa.gov \* (202) 564-3068 \*

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**From:** Mathias, Scott  
**Sent:** Thursday, July 27, 2017 12:30 PM  
**To:** Koerber, Mike <Koerber.Mike@epa.gov>; Smith, Kristi <Smith.Kristi@epa.gov>; Oldham, Carla <Oldham.Carla@epa.gov>; Jones, Rhea <Jones.Rhea@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>; Tierney, Jan <tierney.jan@epa.gov>  
**Cc:** Long, Pam <Long.Pam@epa.gov>  
**Subject:** O3D extension withdrawal: draft FRN & Key Messages  
**Importance:** High

All,

Attached is the latest draft of the FRN and a new document containing Key Messages that the administration may want to use regarding this action and the broader context of ozone NAAQS implementation.

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into Cooperative Agreements to Provide Regulatory Relief,” and ultimately care should be taken to ensure that these messages continue to be consistent as both documents move toward final.

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**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310**

**To:** Bianco, Karen[Bianco.Karen@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]  
**From:** Tierney, Jan  
**Sent:** Wed 7/26/2017 9:25:26 PM  
**Subject:** my comments on notice  
Notice-withdraw extension of O3D deadline 7-26-17 OAQPS draft ogc.doc

My edits. I did not look at what Kristi sent to the program earlier today, but this doesn't seem to do what Karen described to me yesterday. I'm logging off for the day, but will be in the office by 7:45 tomorrow morning.

**To:** Smith, Kristi[Smith.Kristi@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]  
**Cc:** Oldham, Carla[Oldham.Carla@epa.gov]; Jones, Rhea[Jones.Rhea@epa.gov]  
**From:** Mathias, Scott  
**Sent:** Wed 7/26/2017 8:37:46 PM  
**Subject:** draft Withdrawal Notice - 1-yr O3D extension  
Notice-withdraw extension of O3D deadline 7-26-17 OAQPS draft.doc

OGC Colleagues,

Attached is the OAQPS draft of the notice for your final review before we go through the final program office steps to get signature (including Action Memo, Fact Sheet, etc.). This version reflects Koerber's review. Please send any changes back to all the OAQPS people on this email. Thanks.

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310**



**To:** Bianco, Karen[Bianco.Karen@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]  
**From:** Tierney, Jan  
**Sent:** Wed 7/26/2017 12:34:38 PM  
**Subject:** Re: O3D withdrawal notice - current draft  
[Notice-withdraw extension of O3D deadline 7-25-17 jmt.doc](#)

I made a few small edits. I will be out at a dentist appointment this morning - leaving shortly before 9. I can send this to Carla now or we can wait and one of you can send after we talk with OAQPS this morning. I did not attempt to write up the rationale.

---

**From:** Bianco, Karen  
**Sent:** Tuesday, July 25, 2017 8:55 PM  
**To:** Tierney, Jan; Smith, Kristi  
**Subject:** FW: O3D withdrawal notice - current draft

This provides the basic skeleton of the notice. Hopefully OAQPS can do more to build it out after we talk to them tomorrow morning about the direction we received from Justin.

**From:** Oldham, Carla  
**Sent:** Tuesday, July 25, 2017 6:00 PM  
**To:** Mathias, Scott <Mathias.Scott@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>  
**Cc:** Tierney, Jan <tierney.jan@epa.gov>; Jones, Rhea <Jones.Rhea@epa.gov>  
**Subject:** RE: O3D withdrawal notice - current draft

Hi All,

Because time is short (NLT Aug 2 for signature), I'm sending you the draft to look at. This will provide the context for whatever is to be added. I have highlighted 2 specific spots where input is needed. The first spot asks the question about whether we need to repeat the original reasons the Administrator extended the deadline. I'm thinking the answer is no. The second spot is where the rationale for the withdrawal would go. Review of the other parts of the notice would also be helpful. This draft notice is similar to the notice to extend the deadline.

Carla Oldham  
US EPA Office of Air Quality Planning and Standards

109 TW Alexander Drive (C539-04)  
Research Triangle Park, NC 27711  
919-541-3347  
[oldham.carla@epa.gov](mailto:oldham.carla@epa.gov)

**From:** Mathias, Scott  
**Sent:** Tuesday, July 25, 2017 5:27 PM  
**To:** Bianco, Karen <[Bianco.Karen@epa.gov](mailto:Bianco.Karen@epa.gov)>  
**Cc:** Tierney, Jan <[tierney.jan@epa.gov](mailto:tierney.jan@epa.gov)>; Oldham, Carla <[Oldham.Carla@epa.gov](mailto:Oldham.Carla@epa.gov)>; Jones, Rhea <[Jones.Rhea@epa.gov](mailto:Jones.Rhea@epa.gov)>  
**Subject:** O3 notice

Karen,

Just got your mssg and Carla is here with me. She tried to call you back but no answer. Since you were first-hand (second-hand?) to the direction, perhaps you should write it up and leave blanks or instructions for the program office where you think we are better positioned to address. Should Carla send you the current shell, or should we just wait to get the insert that we'll put into the "insert rationale" section?

Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310

**To:** Mathias, Scott[Mathias.Scott@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]  
**Cc:** Tierney, Jan[tierney.jan@epa.gov]; Jones, Rhea[Jones.Rhea@epa.gov]  
**From:** Oldham, Carla  
**Sent:** Tue 7/25/2017 9:59:37 PM  
**Subject:** RE: O3D withdrawal notice - current draft  
Notice-withdraw extension of O3D deadline 7-25-17.doc

Hi All,

Because time is short (NLT Aug 2 for signature), I'm sending you the draft to look at. This will provide the context for whatever is to be added. I have highlighted 2 specific spots where input is needed. The first spot asks the question about whether we need to repeat the original reasons the Administrator extended the deadline. I'm thinking the answer is no. The second spot is where the rationale for the withdrawal would go. Review of the other parts of the notice would also be helpful. This draft notice is similar to the notice to extend the deadline.

Carla Oldham  
US EPA Office of Air Quality Planning and Standards

109 TW Alexander Drive (C539-04)  
Research Triangle Park, NC 27711  
919-541-3347  
oldham.carla@epa.gov

**From:** Mathias, Scott  
**Sent:** Tuesday, July 25, 2017 5:27 PM  
**To:** Bianco, Karen <Bianco.Karen@epa.gov>  
**Cc:** Tierney, Jan <tierney.jan@epa.gov>; Oldham, Carla <Oldham.Carla@epa.gov>; Jones, Rhea <Jones.Rhea@epa.gov>  
**Subject:** O3 notice

Karen,

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**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 |  
919.541.5310**

**To:** Koerber, Mike[Koerber.Mike@epa.gov]; Wood, Anna[Wood.Anna@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]; Mathias, Scott[Mathias.Scott@epa.gov]; Wayland, Richard[Wayland.Richard@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Smith, Kristi  
**Sent:** Thur 7/20/2017 1:22:13 PM  
**Subject:** RE: Final briefing papers  
O3D - Insufficient Info Briefing - outline and timing.docx

Here's an outline with timing info. I'll make copies and bring them down.

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* smith.kristi@epa.gov \* (202) 564-3068 \*

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**From:** Koerber, Mike  
**Sent:** Thursday, July 20, 2017 8:53 AM  
**To:** Lewis, Josh <Lewis.Josh@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>  
**Cc:** Bianco, Karen <Bianco.Karen@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Smith, Kristi <Smith.Kristi@epa.gov>; Tierney, Jan <tierney.jan@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>; Wayland, Richard <Wayland.Richard@epa.gov>  
**Subject:** Final briefing papers

Here are the documents for the 9:30 meeting. Thanks for your patience.

Mike

**To:** Lewis, Josh[Lewis.Josh@epa.gov]; Cyran, Carissa[Cyran.Carissa@epa.gov]  
**Cc:** Bianco, Karen[Bianco.Karen@epa.gov]; Wood, Anna[Wood.Anna@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]; Mathias, Scott[Mathias.Scott@epa.gov]; Wayland, Richard[Wayland.Richard@epa.gov]  
**From:** Koerber, Mike  
**Sent:** Thur 7/20/2017 12:52:53 PM  
**Subject:** Final briefing papers  
[O3D - Insufficient Info Briefing - appendices.docx](#)  
[O3D - Insufficient Info Briefing v7 7-19-2017 \(002\)a.docx](#)

Here are the documents for the 9:30 meeting. Thanks for your patience.

Mike

**To:** Mathias, Scott[Mathias.Scott@epa.gov]  
**Cc:** Tierney, Jan[tierney.jan@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Smith, Kristi  
**Sent:** Wed 7/19/2017 2:39:19 PM  
**Subject:** ozone briefing  
O3D - Insufficient Info Briefing v5 7-18-2017 - OGC version.docx

Per our discussion, here's a revised paper that we've put together based on the prior drafts. As you'll see, it's just the main briefing document. We've moved the other info from the prior drafts to the appendix, but we'll hold off any edits to that until we hear from you.

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* smith.kristi@epa.gov \* (202) 564-3068 \*

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**To:** Smith, Kristi[Smith.Kristi@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]  
**From:** Mathias, Scott  
**Sent:** Tue 7/18/2017 2:49:38 PM  
**Subject:** FW: O3 extension briefing - revised  
O3D - Insufficient Info Briefing v3 7-18-2017.docx

I haven't seen this go around yet, so I'm sending to you.

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310**

**From:** Mathias, Scott  
**Sent:** Tuesday, July 18, 2017 10:24 AM  
**To:** Koerber, Mike <Koerber.Mike@epa.gov>; South, Peter <South.Peter@epa.gov>  
**Subject:** O3 extension briefing - revised

Reflects input from OGC and AQAD staff.

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310**



**To:** Bianco, Karen[Bianco.Karen@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]  
**From:** Mathias, Scott  
**Sent:** Mon 7/17/2017 10:02:42 PM  
**Subject:** FW: Updated O3D extension briefing  
O3D - Insufficient Info Briefing v2 7-17-2017.docx

Here's where OAQPS is at the moment. Your section is now section V, and can include your assessment of risks associated with any of the policy ideas being presented.

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310**

**From:** Mathias, Scott  
**Sent:** Monday, July 17, 2017 6:02 PM  
**To:** Koerber, Mike <Koerber.Mike@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Page, Steve <Page.Steve@epa.gov>  
**Subject:** Updated O3D extension briefing

See attached.

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310**

**To:** Bianco, Karen[Bianco.Karen@epa.gov]  
**Cc:** Jones, Rhea[Jones.Rhea@epa.gov]; Scott, Denise[Scott.Denise@epa.gov]; Oldham, Carla[Oldham.Carla@epa.gov]; Perlmutter, Lars[perlmutter.lars@epa.gov]; Gabilovich, Lev[Gabilovich.Lev@epa.gov]  
**From:** Mathias, Scott  
**Sent:** Mon 7/17/2017 6:00:50 PM  
**Subject:** O3D - Insufficient Info Briefing 7-17-2017.docx  
[O3D - Insufficient Info Briefing 7-17-2017.docx](#)

Karen,

See attached draft. The OGC section is currently blank. Looks like we're briefing Page at 4 pm today, and the Sarah briefing is now tomorrow at 9:30. Please review/comment and add your section. We don't expect a polished product, but it would be good for Steve to see it today.

Scott

**To:** Dunham, Sarah[Dunham.Sarah@epa.gov]; Wood, Anna[Wood.Anna@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Orlin, David[Orlin.David@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Lewis, Josh[Lewis.Josh@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Williams, Melina[Williams.Melina@epa.gov]; Mathias, Scott[Mathias.Scott@epa.gov]; Baptist, Erik[baptist.erik@epa.gov]; Page, Steve[Page.Steve@epa.gov]  
**From:** Smith, Kristi  
**Sent:** Fri 7/14/2017 6:26:00 PM  
**Subject:** Materials -- re: Follow-up ozone extension discussion with Kevin Minoli  
[Designations delay Briefing Sheet 7.13.17.docx](#)  
[Recent Designation Extensions.docx](#)  
[Designations Process Generally.docx](#)  
[Ozone Extension Stay Response – Strawman schedule.docx](#)

I updated the invite for the afternoon meeting with the briefing materials, and I'm also attaching them here.

There are 4 papers:

- 1) Main briefing paper on overall options for moving forward
- 2) Recent designation extensions (excerpt from a prior OAQPS briefing paper)
- 3) Overview of the designations process generally
- 4) Strawman proposal on timing of EPA action based on the deadline for the EPA response in the stay litigation

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* smith.kristi@epa.gov \* (202) 564-3068 \*

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## Designation Process Generally

- Under CAA § 107(d), designations are established through cooperative process with the states.
  - For ozone, EPA has established the parameters of that process – including the information necessary to designate areas – in:
    - 40 CFR Part 50, Appendix U (promulgated with the 2015 ozone NAAQS): addressing monitoring data, and
    - EPA’s 2015 ozone designation guidance (issued Feb. 2016): addressing the analysis to determine nearby areas contributing to nonattainment.
- Not later than 1 year after NAAQS are promulgated, States provide designation recommendations.
  - States recommend both (1) designation status and (2) boundaries of the areas.
- EPA evaluates the state information.
  - If EPA intends to promulgate a designation different from a state’s recommendation (either status or boundaries), then the CAA requires EPA to:
    - notify the state at least 120 days prior to promulgating the final designation and
    - provide the state an opportunity to comment on the intended modification.
  - EPA usually fulfills this obligation through “120 day letters” to governors with accompanying Technical Support Documents (TSDs) for areas EPA intends to designate as nonattainment and an FR Notice.
    - Although required to send 120 day letters only to states with which we disagree with the recommendation and allow them to comment, we generally
      - send them to all states and
      - provide general public notice and comment (CAA § 107(d)(2)(B) provides that designation actions “shall not be subject to the [APA notice and comment] provisions, except nothing herein shall be construed as precluding such public notice and comment whenever possible”).
- Not later than 2 years after NAAQS are promulgated, EPA considers any information submitted by states and public comments and issues final designations.
  - The Administrator can extend the deadline by one year if there is “insufficient information to promulgate the designations” (CAA § 107(d)(1)(B)(i)).
  - At the time of final designations, EPA also issues final TSDs.
  - For ozone, at the time of final designations, areas are classified by operation of law based on a separate classification rule interpreting how the statutory classifications in CAA § 181(a)(1) will apply for the relevant NAAQS.
    - Classifications are marginal, moderate, serious, severe, and extreme, and are based on level of ozone pollution above the NAAQS with successively later attainment dates for each higher classification.
    - The classification rule needs to be issued no later than the date of the final designations.

## Ozone Extension Stay Response – Strawman schedule

July 14 – Briefing on procedural options moving forward

July 18 – Briefing on “insufficient information”

July 19 - Decision made on path forward

[4 days for staff-level drafting, seeking of additional information from management as needed, and review through mid-level management]

July 25 – To OAR IO/OGC IO for review (1 day, including incorporating comments into clean draft)

July 26 – To OP for review (1 day)

July 27 – To OEX for review (1 day)

### **July 28 – Signature**

July 31 – DOJ response to stay motion due\*

\*assumes a 7-day extension from our current response date (July 24).

## RECENT HISTORY OF 1-YEAR DESIGNATIONS EXTENSIONS

- **2012 PM<sub>2.5</sub> NAAQS:** The December 2014 designations deadline was extended until December 2015 for several areas of the country pending a review of state monitoring network data quality procedures. *See* 80 FR 2206 (January 15, 2015) and 80 FR 18535 (April 7, 2015). Specifically, PM<sub>2.5</sub> monitoring data for 2011 and 2012 from some areas in Georgia, and throughout the entire states of Tennessee and Florida were incomplete due to quality assurance failures. Complete data became available in the remaining areas of Georgia and most of Florida by the end of calendar year 2015, and in August 2016 the EPA issued designations for these areas. *See* 81 FR 61136 (September 6, 2016 – areas in GA and FL). Although past the statutory extension deadline, at the end of calendar year 2016 complete data became available for the state of Tennessee, and the EPA is currently preparing to issue the designations for this state in 2017. Once the Tennessee designations are finalized, there will remain only 5 counties in Florida that are undesignated for the 2012 PM<sub>2.5</sub> NAAQS.
- **2010 SO<sub>2</sub> NAAQS:** The June 2012 designations deadline was extended until June 2013 for the entire country by EPA due to “significant uncertainty,” citing the need to resolve the approach for SO<sub>2</sub> implementation, including a comprehensive SO<sub>2</sub> air quality assessment strategy. *See* 78 FR 47191 (August 5, 2013). In August 2013, the Administrator issued nonattainment designations for 29 areas where the existing SO<sub>2</sub> monitoring network indicated violations of the revised SO<sub>2</sub> NAAQS, and further deferred designations for the remainder of the country pending the EPA’s effort to finalize a comprehensive SO<sub>2</sub> air quality assessment strategy. Under the terms of a settlement to a deadline suit brought by environmental groups, the Administrator issued designations for 65 additional areas in 2016. *See* 81 FR 45039 (July 12, 2016) and 81 FR 89870 (December 13, 2016). Under the terms of the settlement, the Administrator is required to issue designations for most of the remainder of the U.S. by the end of 2017, and the remaining areas by the end of 2020.
- **2008 Lead NAAQS:** The October 2010, designations deadline was extended until October 2011, for most of the country to enable states to finish establishing a new network of lead monitors required for sources of lead emissions greater than 1 ton per year. *See* 75 FR 71033 (November 22, 2010). In October 2010, nonattainment designations were issued for 16 areas where the existing lead monitoring network indicated violations of the 2008 lead NAAQS. Designations were completed for all remaining areas of the U.S. in October 2011.<sup>1</sup> *See* 76 FR 72097 (November 22, 2011).
- **2008 Ozone NAAQS:** The March 2010 designations deadline was extended until March 2011 for the entire country because EPA announced in September 2009 an intention to reconsider the 0.075 ppm standard that had been established in 2008. *See* 75 FR 2936 (January 19, 2010). In that action, EPA stated that it had insufficient information to promulgate the designations because of the significant uncertainty that the reconsideration proposal created regarding the continued applicability of the 2008 ozone NAAQS. In September 2011, EPA announced that the reconsideration would not be completed, and implementation of the 2008 NAAQS would move forward. A deadline suit from public health and environmental groups followed, and litigants agreed to settle on a May 31, 2012, deadline. The Administrator issued ozone designations for the entire country in the spring of 2012. *See* 77 FR 30087 (May 21, 2012) and 77 FR 34221 (June 11, 2012). At the same time EPA issued the designations, EPA issued the rule establishing the method of classification for areas for the 2008 ozone NAAQS. *See* 77 FR 30160 (May 21, 2012).

<sup>1</sup> The form of the lead standard requires as few as 3 months of monitoring data in order to determine an area is out of compliance. States had established new monitoring networks starting in 2010 for sources of lead required by EPA regulations to be monitored. This allowed additional monitoring data to be gathered for calendar year 2010 and the beginning of 2011 to inform designations for the remainder of the country.

**To:** Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Graham, Amy[graham.amy@epa.gov]; Bennett, Tate[Bennett.Tate@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Reeder, John[Reeder.John@epa.gov]; Brown, Byron[brown.byron@epa.gov]  
**Cc:** Grantham, Nancy[Grantham.Nancy@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Hull, George[Hull.George@epa.gov]; Lewis, Josh[Lewis.Josh@epa.gov]; Burden, Susan[Burden.Susan@epa.gov]; Owens, Nicole[Owens.Nicole@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]; Curry, Bridgid[Curry.Bridgid@epa.gov]  
**From:** Knapp, Kristien  
**Sent:** Wed 8/2/2017 9:57:26 PM  
**Subject:** Signed - Ozone Extension Withdrawal  
[Ozone Extension Withdrawal August 2 2017.pdf](#)

A Federal Register notice announcing a withdrawal of the 1-year extension of the deadline for promulgating initial area designations for the ozone national ambient air quality standards was signed today. A copy of the signed notice is attached. Please let me know if you have any questions.

Thanks,

Kristien

Kristien Knapp

Special Assistant (OAR, OITA, OGC, OP)

Office of the Administrator

(202) 564-3277

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR PART 81**

**[EPA-HQ-OAR-2017-0223; FRL- ]**

**Withdrawal of Extension of Deadline for Promulgating Designations for the 2015 Ozone National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of extension of deadline for promulgating designations.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing that it is withdrawing the 1-year extension of the deadline for promulgating initial area designations for the ozone national ambient air quality standards (NAAQS) that were promulgated in October 2015. Thus, unless and until the Administrator takes additional final action, the 2-year deadline for promulgating designations provided in the Clean Air Act (CAA) applies.

**DATES:** The deadline for the EPA to promulgate initial designations for the 2015 ozone NAAQS is October 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding this action, contact Carla Oldham, Air Quality Planning Division, Office of Air Quality Planning and Standards, Mail Code C539-04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-3347; email address: [oldham.carla@epa.gov](mailto:oldham.carla@epa.gov)

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

Entities potentially affected by this action include state, local and tribal governments that would participate in the initial area designation process for the 2015 ozone standards.



*B. Where can I get a copy of this document and other related information?*

The EPA has established a docket for designations for the 2015 ozone NAAQS under Docket ID No. EPA-HQ-OAR-2017-0223. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

An electronic copy of this notice is also available at <http://www.epa.gov/ozone-designations> along with other information related to designations for the 2015 ozone NAAQS.

## **II. Designations Requirements**

On October 1, 2015, the EPA signed a notice of final rulemaking that revised the 8-hour primary and secondary ozone NAAQS (80 FR 65292; October 26, 2015). Both standards were lowered from 0.075 parts per million (ppm) to a level of 0.070 ppm.

After the EPA establishes or revises a NAAQS pursuant to CAA section 109, the CAA directs the EPA and the states to begin taking steps to ensure that those NAAQS are met. The first step is to identify areas of the country that meet or do not meet that NAAQS. This step is known as the initial area designations. Section 107(d)(1)(A) of the CAA provides that, “By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of

a new or revised national ambient air quality standard for any pollutant under section [109], the Governor of each State shall \* \* \* submit to the Administrator a list of all areas (or portions thereof) in the State” that designates those areas as nonattainment, attainment, or unclassifiable.

The CAA further provides, “Upon promulgation or revision of a national ambient air quality standard, the Administrator shall promulgate the designations of all areas (or portions thereof) \* \* \* as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised national ambient air quality standard. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations.” 42 U.S.C. § 7407(d)(1)(B)(i).

In the EPA guidance, “Area Designations for the 2015 Ozone National Ambient Air Quality Standards,” the EPA indicated it expected to complete the initial area designations by October 1, 2017, consistent with the statutory requirement that the EPA designate areas no later than 2 years following promulgation of a revised NAAQS.<sup>1</sup>

### **III. Withdrawal of Extension of Deadline for Promulgating Designations for the 2015 Ozone NAAQS**

In letters sent to states on June 6, 2017, and in a **Federal Register** notice published on June 28, 2017 (82 FR 29246), the EPA Administrator Scott Pruitt announced that he was using his authority under section 107(d)(1)(B)(i) of the CAA to extend by 1 year, to October 1, 2018, the deadline for promulgating initial area designations for the 2015 ozone NAAQS. At that time (i.e., in early June), it was not clear that the agency would be in the position to complete designations for all areas for the 2015 ozone NAAQS in accordance with the 2-year statutory

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<sup>1</sup> Memorandum from Janet G. McCabe, Acting Assistant Administrator, to Regional Administrators, Regions 1-10. February 25, 2016.

deadline of October 1, 2017. For a variety of other NAAQS in the past, previous EPA Administrators have used the authority under section 107(d)(1)(B)(i) to take additional time to complete designations.<sup>2</sup> The Administrator decided to similarly invoke the extension with regard to designations for the 2015 ozone NAAQS.

The EPA has continued to discuss and work with states concerning designations, and now understands that the information gaps that formed the basis of the extension may not be as expansive as we previously believed. The EPA now intends to reassess whether there are areas with underlying technical issues, whether there are state designation recommendations that the EPA intends to modify, and whether for any area there is insufficient information to promulgate the designation. The EPA believes this reevaluation will help ensure that more Americans are living and working in areas that meet national air quality standards. The agency believes that there may be areas of the United States for which designations could be promulgated in the next few months. Therefore, the EPA is withdrawing its prior announced 1-year extension of the deadline for promulgating initial area designations for the 2015 ozone NAAQS, and the 2-year deadline for promulgating designations provided in section 107(d)(1)(B) of the CAA applies. The Administrator may still determine that an extension of time to complete designations is necessary, but is not making such a determination at this time.

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<sup>2</sup> For the 2008 ozone NAAQS, *see* 75 FR 2936 (January 19, 2010); for the 2008 lead NAAQS, *see* 75 FR 71033 (November 22, 2010); for the 2010 sulfur dioxide NAAQS, *see* 77 FR 46295 (August 3, 2012); and for the 2012 fine particulate matter NAAQS, *see* 80 FR 2206 (January 15, 2015).

**Page 5 of 5 – Withdrawal of Extension of Deadline for Promulgating Designations for the 2015 Ozone National Ambient Air Quality Standards**

**LIST OF SUBJECTS IN 40 CFR PART 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

**AUG 02 2017**

\_\_\_\_\_  
Dated:

A handwritten signature in black ink, appearing to read "E. Scott Pruitt", is written over a horizontal line.

E. Scott Pruitt,  
Administrator.

**To:** Koerber, Mike[Koerber.Mike@epa.gov]; Wood, Anna[Wood.Anna@epa.gov]; Jones, Rhea[Jones.Rhea@epa.gov]; Oldham, Carla[Oldham.Carla@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Scott, Denise[Scott.Denise@epa.gov]  
**From:** Mathias, Scott  
**Sent:** Wed 8/2/2017 9:29:57 PM  
**Subject:** RE: final O3D FRN for signature  
[O3D - Insufficient Info Briefing - outline and timing.docx](#)  
[O3D - Insufficient Info Briefing - appendices.docx](#)  
[O3D Area Overview DRAFT 7-17-2017.pptx](#)

So.....gang, what are we doing tomorrow, he-he? We still have some designations to complete in 58 days? Plus another extension notice? I believe Mandy has asked for a briefing on next steps sometime after she returns (she is back Aug 8<sup>th</sup>), so we'll need to repackage the options that were presented on July 20 (attached) and review the status of our assessment of areas (also attached).

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310**

**From:** Koerber, Mike  
**Sent:** Wednesday, August 02, 2017 5:07 PM  
**To:** Mathias, Scott <Mathias.Scott@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>  
**Cc:** Wood, Anna <Wood.Anna@epa.gov>; Jones, Rhea <Jones.Rhea@epa.gov>; Oldham, Carla <Oldham.Carla@epa.gov>; Smith, Kristi <Smith.Kristi@epa.gov>; Tierney, Jan <tierney.jan@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>; Long, Pam <Long.Pam@epa.gov>; South, Peter <South.Peter@epa.gov>; Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>; Henigin, Mary <Henigin.Mary@epa.gov>  
**Subject:** RE: final O3D FRN for signature

Thanks, Scott. I just talked with Mary and she is printing it now and walking it forward.

**From:** Mathias, Scott  
**Sent:** Wednesday, August 02, 2017 5:02 PM  
**To:** Koerber, Mike <Koerber.Mike@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>  
**Cc:** Wood, Anna <Wood.Anna@epa.gov>; Jones, Rhea <Jones.Rhea@epa.gov>; Oldham, Carla <Oldham.Carla@epa.gov>; Smith, Kristi <Smith.Kristi@epa.gov>; Tierney, Jan <tierney.jan@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>; Long, Pam <Long.Pam@epa.gov>; South, Peter <South.Peter@epa.gov>; Cortelyou-Lee, Jan <Cortelyou-

Lee.Jan@epa.gov>; Henigin, Mary <Henigin.Mary@epa.gov>

**Subject:** final O3D FRN for signature

This version reflects all edits received today from OGC staff, Mandy, and others. It is the version cleared by Brittany earlier this hour to forward for signature. It now also includes a last minute edit directed to me by phone from Justin and Brittany regarding “previous Administrators.”

I am also sending forward a revised Comm Plan that conforms to today’s changes.

Thanks everyone for your patience in getting this wrapped up.

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310**

**To:** Koerber, Mike[Koerber.Mike@epa.gov]; Lewis, Josh[Lewis.Josh@epa.gov]  
**Cc:** Wood, Anna[Wood.Anna@epa.gov]; Jones, Rhea[Jones.Rhea@epa.gov]; Oldham, Carla[Oldham.Carla@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Long, Pam[Long.Pam@epa.gov]; South, Peter[South.Peter@epa.gov]; Cortelyou-Lee, Jan[Cortelyou-Lee.Jan@epa.gov]; Henigin, Mary[Henigin.Mary@epa.gov]  
**From:** Mathias, Scott  
**Sent:** Wed 8/2/2017 9:01:52 PM  
**Subject:** final O3D FRN for signature  
[Notice-withdraw extension of O3D deadline 8-2-17 fnl.docx](#)  
[Extension Withdrawal Comm Plan 8-2-17 fnl.docx](#)

This version reflects all edits received today from OGC staff, Mandy, and others. It is the version cleared by Brittany earlier this hour to forward for signature. It now also includes a last minute edit directed to me by phone from Justin and Brittany regarding “previous Administrators.”

I am also sending forward a revised Comm Plan that conforms to today’s changes.

Thanks everyone for your patience in getting this wrapped up.

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310**

**To:** Tierney, Jan[tierney.jan@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]; Mathias, Scott[Mathias.Scott@epa.gov]; Henigin, Mary[Henigin.Mary@epa.gov]  
**From:** Lewis, Josh  
**Sent:** Wed 8/2/2017 8:49:04 PM  
**Subject:** FW: final edits to the withdrawal FR  
Notice-withdraw extension of O3D deadline 8-2-17 rev.docx

I just heard that OMB is ok with the package. Can OGC and OAQPS confirm that Jan's version from 2:29 is the version that should go forward for signature?

**From:** Tierney, Jan  
**Sent:** Wednesday, August 02, 2017 2:29 PM  
**To:** Schwab, Justin <schwab.justin@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>  
**Cc:** Smith, Kristi <Smith.Kristi@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>  
**Subject:** final edits to the withdrawal FR

Justin, Brittany, Mandy -

The attached FR notice, in clean form, incorporates edits from OGC and OAQPS, including reference to Administrators Jackson and McCarthy as requested. It also includes citations for prior extension actions which had not been included in the earlier draft that was reviewed. Once we receive approval from you regarding the version for signature, OAQPS will send a new set of final documents, including the action memo and comm strat to OAR for processing. Thanks.

Jan Tierney



**To:** Schwab, Justin[schwab.justin@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov];  
Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]  
**Cc:** Smith, Kristi[Smith.Kristi@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Mathias,  
Scott[Mathias.Scott@epa.gov]  
**From:** Tierney, Jan  
**Sent:** Wed 8/2/2017 6:28:41 PM  
**Subject:** final edits to the withdrawal FR  
Notice-withdraw extension of O3D deadline 8-2-17 rev.docx

Justin, Brittany, Mandy -

The attached FR notice, in clean form, incorporates edits from OGC and OAQPS, including reference to Administrators Jackson and McCarthy as requested. It also includes citations for prior extension actions which had not been included in the earlier draft that was reviewed. Once we receive approval from you regarding the version for signature, OAQPS will send a new set of final documents, including the action memo and comm strat to OAR for processing. Thanks.

Jan Tierney

**To:** Bianco, Karen[Bianco.Karen@epa.gov]  
**From:** Schwab, Justin  
**Sent:** Wed 8/2/2017 4:22:29 PM  
**Subject:** Notice-withdraw extension of O3D deadline 7-27-17 \_MMG edits\_CLEAN.docx  
Notice-withdraw extension of O3D deadline 7-27-17 \_MMG edits\_CLEAN.docx  
ATT00001.txt

**To:** Rave, Norman (ENRD)[Norman.Rave@usdoj.gov]  
**From:** Bianco, Karen  
**Sent:** Fri 7/28/2017 3:14:24 PM  
**Subject:** draft Federal Register notice withdrawing ozone designation delay  
Notice-withdraw extension of O3D deadline 7-27-17 PM CLEAN draft.docx

Hello Norman,

Attached is a draft of the Federal Register notice withdrawing the prior announced delay in designations for the 2015 ozone NAAQS. This was drafted at a staff-level and reviewed through mid-level management, but has not been reviewed by high-level managers at EPA (they are doing their review right now). You had asked to see a draft of the notice, so I am sharing this now in case it is helpful to you in drafting our response and motion to dismiss for next week, but the notice is definitely subject to change. I will provide an updated version of the draft once it is closer to its final form.

Thanks, Karen

Karen Bennett Bianco | U.S. Environmental Protection Agency

Attorney-Adviser | Office of General Counsel | WJCN 7426X | 202-564-3298

**To:** Tierney, Jan[tierney.jan@epa.gov]  
**From:** Bianco, Karen  
**Sent:** Thur 7/27/2017 8:04:50 PM  
**Subject:** FW: My review of the ozone messages  
Key Messages on Notice-withdraw extension of O3D deadline 7-27-17 + OGC.docx

Jan, I feel like a lot has been added in here (mostly by me :/ ) since you last looked at it. I'm fine with this, but want to make sure you have the time you need to look through it and see if you're OK with everything in here. If you are OK with it, then you can ship it to OAQPS or let me know and I can email it as well.

**From:** Smith, Kristi  
**Sent:** Thursday, July 27, 2017 4:01 PM  
**To:** Bianco, Karen <Bianco.Karen@epa.gov>; Tierney, Jan <tierney.jan@epa.gov>  
**Subject:** My review of the ozone messages

I agree this is less than ideal. I've repackaged your leading comments on the "path forward" piece into one general comment with a suggestion for overall revision of approach, but then I left most of the other stuff. If you're okay with this, please send to Scott and others as I'm about to hop on a call. But if you feel like we need to talk, please e-mail with an urgent sign and I'll call you on my cell (while Nora stays on our call).

- Kristi

Kristi M. Smith \* Assistant General Counsel for the NAAQS Implementation Group \* Air & Radiation Law Office \* US EPA, Office of General Counsel \* [smith.kristi@epa.gov](mailto:smith.kristi@epa.gov) \* (202) 564-3068 \*

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**To:** Tierney, Jan[tierney.jan@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]  
**From:** Bianco, Karen  
**Sent:** Thur 7/27/2017 5:44:32 PM  
**Subject:** RE: key messages piece  
Notice-withdraw extension of O3D deadline 7-27-17 OAQPS draft +kbb.docx

Here's my markup of the FR notice. It looked like this draft incorporated Jan's edits from yesterday, so I just reviewed it as it stood and redlined some changes. I tried to explain points that were a policy call (so OAQPS can ignore me) vs. one that I think could make our legal position marginally stronger.

**From:** Bianco, Karen  
**Sent:** Thursday, July 27, 2017 1:35 PM  
**To:** Tierney, Jan <tierney.jan@epa.gov>; Smith, Kristi <Smith.Kristi@epa.gov>  
**Subject:** RE: key messages piece

Will send the FR notice shortly and then will look at this

**From:** Tierney, Jan  
**Sent:** Thursday, July 27, 2017 1:14 PM  
**To:** Smith, Kristi <Smith.Kristi@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>  
**Subject:** key messages piece

I didn't look back at the FR notice since it presumably is unchanged. Here are a couple of edits/comments on the messaging piece, which seems to have a significant focus on background.

**To:** Tierney, Jan[tierney.jan@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]  
**From:** Bianco, Karen  
**Sent:** Wed 7/26/2017 12:55:44 AM  
**Subject:** FW: O3D withdrawal notice - current draft  
Notice-withdraw extension of O3D deadline 7-25-17.doc

This provides the basic skeleton of the notice. Hopefully OAQPS can do more to build it out after we talk to them tomorrow morning about the direction we received from Justin.

**From:** Oldham, Carla  
**Sent:** Tuesday, July 25, 2017 6:00 PM  
**To:** Mathias, Scott <Mathias.Scott@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>  
**Cc:** Tierney, Jan <tierney.jan@epa.gov>; Jones, Rhea <Jones.Rhea@epa.gov>  
**Subject:** RE: O3D withdrawal notice - current draft

Hi All,

Because time is short (NLT Aug 2 for signature), I'm sending you the draft to look at. This will provide the context for whatever is to be added. I have highlighted 2 specific spots where input is needed. The first spot asks the question about whether we need to repeat the original reasons the Administrator extended the deadline. I'm thinking the answer is no. The second spot is where the rationale for the withdrawal would go. Review of the other parts of the notice would also be helpful. This draft notice is similar to the notice to extend the deadline.

Carla Oldham  
US EPA Office of Air Quality Planning and Standards

109 TW Alexander Drive (C539-04)  
Research Triangle Park, NC 27711  
919-541-3347  
[oldham.carla@epa.gov](mailto:oldham.carla@epa.gov)

**From:** Mathias, Scott  
**Sent:** Tuesday, July 25, 2017 5:27 PM  
**To:** Bianco, Karen <Bianco.Karen@epa.gov>  
**Cc:** Tierney, Jan <tierney.jan@epa.gov>; Oldham, Carla <Oldham.Carla@epa.gov>; Jones, Rhea <Jones.Rhea@epa.gov>  
**Subject:** O3 notice

Karen,

Just got your mssg and Carla is here with me. She tried to call you back but no answer. Since you were first-hand (second-hand?) to the direction, perhaps you should write it up and leave blanks or instructions for the program office where you think we are better positioned to address. Should Carla send you the current shell, or should we just wait to get the insert that we'll put into the "insert rationale" section?

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC 27711 | 919.541.5310**

**To:** Smith, Kristi[Smith.Kristi@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]  
**From:** Bianco, Karen  
**Sent:** Mon 7/24/2017 12:29:15 PM  
**Subject:** FW: REMINDER: 07/24/17 Reg Review Agenda Updates  
17-07-24 agenda.docx

Should we check in at reg review re: a decision on the 2015 ozone designation delay? The draft schedule I had put together assumed a decision last Friday and us drafting today through Thursday.

Also, should we talk to OAQPS about starting to draft a simple withdrawal (since it seems clear we'll at least be doing that)? We can always add to it later based on the direction we get.

-----Original Message-----

From: Graham, Cheryl  
Sent: Monday, July 24, 2017 7:06 AM  
To: OGC ARLO <OGC\_ARLO@epa.gov>  
Subject: REMINDER: 07/24/17 Reg Review Agenda Updates

Attached is the strikeout version of the reg agenda, if you have any additions/deletions please let me know by 11:00am today. Reg Review is scheduled for today (7/24) at 2:30pm in room 4045.

Thank you

Cheryl R. Graham  
OGC/ARLO  
(202) 564-5473



**To:** Wood, Anna[Wood.Ann@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]; Mathias, Scott[Mathias.Scott@epa.gov]; Wayland, Richard[Wayland.Richard@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]  
**From:** Bianco, Karen  
**Sent:** Thur 7/20/2017 1:30:50 AM  
**Subject:** new versions of papers for tomorrow AM  
[O3D - Insufficient Info Briefing - appendices.docx](#)  
[O3D - Insufficient Info Briefing v7 7-19-2017.docx](#)

Attaching new versions of the briefing paper and the appendices. Only change in the briefing paper is to shift the language related to the newly violating areas based on the email Mike K sent to Chet. For the appendices, I incorporated the edits sent by Kristi and Jan, deleted the map, and made the text on newly violating areas consistent with the briefing paper. I'm still hoping someone from OAQPS can add a page to the appendix document with the specific data on the newly violating areas.

Thanks all.

Karen Bennett Bianco | U.S. Environmental Protection Agency

Attorney-Adviser | Office of General Counsel | WJCN 7426X | 202-564-3298

**To:** Koerber, Mike[Koerber.Mike@epa.gov]; Wood, Anna[Wood.Anna@epa.gov]; Mathias, Scott[Mathias.Scott@epa.gov]; Wayland, Richard[Wayland.Richard@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]  
**From:** Bianco, Karen  
**Sent:** Wed 7/19/2017 8:43:05 PM  
**Subject:** new clean copy of briefing paper for tomorrow  
[O3D - Insufficient Info Briefing v7 7-19-2017.docx](#)

All edits accepted/comments accounted for. I highlighted the point regarding how many counties are monitoring 2017 violations just in case we need to update that as we pull together the detailed info for the Appendix. We'll rely on you guys in OAQPS for the final update there. the text now reflects Chet's edits.

Jan/Kristi please feel free to move things along on behalf of OGC until I log back in at 8.

Karen Bennett Bianco | U.S. Environmental Protection Agency

Attorney-Adviser | Office of General Counsel | WJCN 7426X | 202-564-3298

**To:** Smith, Kristi[Smith.Kristi@epa.gov]  
**Cc:** Tierney, Jan[tierney.jan@epa.gov]  
**From:** Bianco, Karen  
**Sent:** Tue 7/18/2017 12:43:42 AM  
**Subject:** RE: Updated O3D extension briefing  
O3D - Insufficient Info Briefing v2 7-17-2017 +kbb.docx

Attached is my markup. I believe Jan is planning to add her markup onto this draft early tomorrow morning (around 8). Kristi, if you're providing any input at this stage, it'd be helpful to have your markup tonight so that Jan can add to it. otherwise, it might be worth just waiting to see whatever draft evolves after the pre-brief with Sarah tomorrow.

**From:** Bianco, Karen  
**Sent:** Monday, July 17, 2017 7:19 PM  
**To:** Smith, Kristi <Smith.Kristi@epa.gov>  
**Subject:** Fwd: Updated O3D extension briefing

This is the latest. I'm planning to review later tonight and could give you a version with my markup by around 9.

Sent from my iPhone

Begin forwarded message:

**From:** "Mathias, Scott" <Mathias.Scott@epa.gov>  
**Date:** July 17, 2017 at 6:02:42 PM EDT  
**To:** "Bianco, Karen" <Bianco.Karen@epa.gov>, "Smith, Kristi" <Smith.Kristi@epa.gov>, "Tierney, Jan" <tierney.jan@epa.gov>  
**Subject:** FW: Updated O3D extension briefing

Here's where OAQPS is at the moment. Your section is now section V, and can include your assessment of risks associated with any of the policy ideas being presented.

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC**  
**27711 | 919.541.5310**

**From:** Mathias, Scott  
**Sent:** Monday, July 17, 2017 6:02 PM

**To:** Koerber, Mike <[Koerber.Mike@epa.gov](mailto:Koerber.Mike@epa.gov)>; Wood, Anna <[Wood.Anna@epa.gov](mailto:Wood.Anna@epa.gov)>;  
Page, Steve <[Page.Steve@epa.gov](mailto:Page.Steve@epa.gov)>  
**Subject:** Updated O3D extension briefing

See attached.

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC  
27711 | 919.541.5310**

**To:** Smith, Kristi[Smith.Kristi@epa.gov]  
**From:** Bianco, Karen  
**Sent:** Mon 7/17/2017 11:18:42 PM  
**Subject:** Fwd: Updated O3D extension briefing  
O3D - Insufficient Info Briefing v2 7-17-2017.docx  
ATT00001.htm

This is the latest. I'm planning to review later tonight and could give you a version with my markup by around 9.

Sent from my iPhone

Begin forwarded message:

**From:** "Mathias, Scott" <Mathias.Scott@epa.gov>  
**Date:** July 17, 2017 at 6:02:42 PM EDT  
**To:** "Bianco, Karen" <Bianco.Karen@epa.gov>, "Smith, Kristi" <Smith.Kristi@epa.gov>, "Tierney, Jan" <tierney.jan@epa.gov>  
**Subject:** FW: Updated O3D extension briefing

Here's where OAQPS is at the moment. Your section is now section V, and can include your assessment of risks associated with any of the policy ideas being presented.

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC**  
**27711 | 919.541.5310**

**From:** Mathias, Scott  
**Sent:** Monday, July 17, 2017 6:02 PM  
**To:** Koerber, Mike <Koerber.Mike@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Page, Steve <Page.Steve@epa.gov>  
**Subject:** Updated O3D extension briefing

See attached.

**Scott Mathias | Associate Director, Air Quality Policy Division | U.S. EPA, RTP, NC**  
**27711 | 919.541.5310**



**To:** Tierney, Jan[tierney.jan@epa.gov]  
**From:** Bianco, Karen  
**Sent:** Mon 7/17/2017 8:14:15 PM  
**Subject:** FW: O3D - Insufficient Info Briefing 7-17-2017.docx  
O3D - Insufficient Info Briefing 7-17-2017.docx

Jan, attached is OAQPS's first cut at the briefing document for our political level briefing Thursday (and to be used at tomorrow's pre-brief with Sarah). Aside from noting the length, which seems inappropriate for an hour long conversation, I have not had a chance to review this. I'm hoping you and I can do so in parallel to get them some feedback before the pre-brief tomorrow.

**From:** Mathias, Scott  
**Sent:** Monday, July 17, 2017 2:01 PM  
**To:** Bianco, Karen <Bianco.Karen@epa.gov>  
**Cc:** Jones, Rhea <Jones.Rhea@epa.gov>; Scott, Denise <Scott.Denise@epa.gov>; Oldham, Carla <Oldham.Carla@epa.gov>; Perlmutter, Lars <perlmutter.lars@epa.gov>; Gabrilovich, Lev <Gabrilovich.Lev@epa.gov>  
**Subject:** O3D - Insufficient Info Briefing 7-17-2017.docx  
**Importance:** High

Karen,

See attached draft. The OGC section is currently blank. Looks like we're briefing Page at 4 pm today, and the Sarah briefing is now tomorrow at 9:30. Please review/comment and add your section. We don't expect a polished product, but it would be good for Steve to see it today.

Scott

**To:** Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Mathias, Scott[Mathias.Scott@epa.gov]  
**Cc:** Smith, Kristi[Smith.Kristi@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]  
**From:** Bianco, Karen  
**Sent:** Thur 7/13/2017 5:48:30 PM  
**Subject:** draft briefing paper for 3:30 with OGC front office  
Designations delay Briefing Sheet 7.13.17.docx

Attached is a briefing paper that Jan and I drafted, and Kristi reviewed, for our 3:30 meeting with the OGC front office on the ozone designations delay. If you have time to review this before 3:15, please send me any edits you have.

Scott, we welcome your input on this document, but please do not distribute it further at this stage.

Thanks! Karen

Karen Bennett Bianco <sup>3</sup> U.S. Environmental Protection Agency

Attorney-Adviser <sup>3</sup> Office of General Counsel <sup>3</sup> WJCN 7426X <sup>3</sup> 202-564-3298



**To:** Rave, Norman (ENRD)[Norman.Rave@usdoj.gov]  
**Cc:** Lipshultz, Jon (ENRD)[Jon.Lipshultz@usdoj.gov]  
**From:** Bianco, Karen  
**Sent:** Wed 8/2/2017 11:03:01 PM  
**Subject:** Re: Signed - Ozone Extension Withdrawal

Great thank you. Sounds like the press release will go out tonight.

Sent from my iPhone

> On Aug 2, 2017, at 6:53 PM, Rave, Norman (ENRD) <Norman.Rave@usdoj.gov> wrote:  
>  
> Thanks, Karen. I have sent it to Seth. I will check it against the motion in the morning. Norman  
>  
> -----Original Message-----  
> From: Bianco, Karen [mailto:Bianco.Karen@epa.gov]  
> Sent: Wednesday, August 2, 2017 6:12 PM  
> To: Rave, Norman (ENRD) <NRave@ENRD.USDOJ.GOV>; Lipshultz, Jon (ENRD)  
<JLipshultz@ENRD.USDOJ.GOV>  
> Subject: Re: Signed - Ozone Extension Withdrawal  
>  
> This is slightly changed from the last draft you saw, so we should do one more cross check of the filing  
to ensure its consistent.  
>  
> And this can go to Seth.  
>  
> Sent from my iPhone  
>  
>> On Aug 2, 2017, at 6:09 PM, Bianco, Karen <Bianco.Karen@epa.gov> wrote:  
>>  
>> Here it is.  
>>  
>> Sent from my iPhone  
>>  
>> Begin forwarded message:  
>>  
>> From: "Knapp, Kristien" <Knapp.Kristien@epa.gov<mailto:Knapp.Kristien@epa.gov>>  
>> To: "Flynn, Mike" <Flynn.Mike@epa.gov<mailto:Flynn.Mike@epa.gov>>, "Jackson, Ryan"  
<jackson.ryan@epa.gov<mailto:jackson.ryan@epa.gov>>, "Bowman, Liz"  
<Bowman.Liz@epa.gov<mailto:Bowman.Liz@epa.gov>>, "Lyons, Troy"  
<lyons.troy@epa.gov<mailto:lyons.troy@epa.gov>>, "Dravis, Samantha"  
<dravis.samantha@epa.gov<mailto:dravis.samantha@epa.gov>>, "Graham, Amy"  
<graham.amy@epa.gov<mailto:graham.amy@epa.gov>>, "Bennett, Tate"  
<Bennett.Tate@epa.gov<mailto:Bennett.Tate@epa.gov>>, "Dunham, Sarah"  
<Dunham.Sarah@epa.gov<mailto:Dunham.Sarah@epa.gov>>, "Gunasekara, Mandy"  
<Gunasekara.Mandy@epa.gov<mailto:Gunasekara.Mandy@epa.gov>>, "Schwab, Justin"  
<schwab.justin@epa.gov<mailto:schwab.justin@epa.gov>>, "Bolen, Brittany"  
<bolen.brittany@epa.gov<mailto:bolen.brittany@epa.gov>>, "Reeder, John"  
<Reeder.John@epa.gov<mailto:Reeder.John@epa.gov>>, "Brown, Byron"  
<brown.byron@epa.gov<mailto:brown.byron@epa.gov>>  
>> Cc: "Grantham, Nancy" <Grantham.Nancy@epa.gov<mailto:Grantham.Nancy@epa.gov>>, "Richardson, RobinH" <Richardson.RobinH@epa.gov<mailto:Richardson.RobinH@epa.gov>>, "Hull, George" <Hull.George@epa.gov<mailto:Hull.George@epa.gov>>, "Lewis, Josh" <Lewis.Josh@epa.gov<mailto:Lewis.Josh@epa.gov>>, "Burden, Susan" <Burden.Susan@epa.gov<mailto:Burden.Susan@epa.gov>>, "Owens, Nicole" <Owens.Nicole@epa.gov<mailto:Owens.Nicole@epa.gov>>, "Rees, Sarah"

<rees.sarah@epa.gov<mailto:rees.sarah@epa.gov>>, "Smith, Kristi"  
<Smith.Kristi@epa.gov<mailto:Smith.Kristi@epa.gov>>, "Bianco, Karen"  
<Bianco.Karen@epa.gov<mailto:Bianco.Karen@epa.gov>>, "Nickerson, William"  
<Nickerson.William@epa.gov<mailto:Nickerson.William@epa.gov>>, "Curry, Bridgid"  
<Curry.Bridgid@epa.gov<mailto:Curry.Bridgid@epa.gov>>  
>> Subject: Signed - Ozone Extension Withdrawal  
>>  
>> A Federal Register notice announcing a withdrawal of the 1-year extension of the deadline for  
promulgating initial area designations for the ozone national ambient air quality standards was signed  
today. A copy of the signed notice is attached. Please let me know if you have any questions.  
>>  
>> Thanks,  
>> Kristien  
>>  
>> Kristien Knapp  
>> Special Assistant (OAR, OITA, OGC, OP)  
>> Office of the Administrator  
>> (202) 564-3277  
>> <Ozone Extension Withdrawal August 2 2017.pdf>  
>

**To:** Orlin, David[Orlin.David@epa.gov]; Williams, Melina[Williams.Melina@epa.gov]  
**From:** Bianco, Karen  
**Sent:** Wed 8/2/2017 10:16:42 PM  
**Subject:** Fwd: Signed - Ozone Extension Withdrawal  
[Ozone Extension Withdrawal August 2 2017.pdf](#)  
[ATT00001.htm](#)

FYI

Sent from my iPhone

Begin forwarded message:

**From:** "Knapp, Kristien" <Knapp.Kristien@epa.gov>  
**To:** "Flynn, Mike" <Flynn.Mike@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>, "Bowman, Liz" <Bowman.Liz@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>, "Dravis, Samantha" <dravis.samantha@epa.gov>, "Graham, Amy" <graham.amy@epa.gov>, "Bennett, Tate" <Bennett.Tate@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Schwab, Justin" <schwab.justin@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>, "Reeder, John" <Reeder.John@epa.gov>, "Brown, Byron" <brown.byron@epa.gov>  
**Cc:** "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Hull, George" <Hull.George@epa.gov>, "Lewis, Josh" <Lewis.Josh@epa.gov>, "Burden, Susan" <Burden.Susan@epa.gov>, "Owens, Nicole" <Owens.Nicole@epa.gov>, "Rees, Sarah" <rees.sarah@epa.gov>, "Smith, Kristi" <Smith.Kristi@epa.gov>, "Bianco, Karen" <Bianco.Karen@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "Curry, Bridgid" <Curry.Bridgid@epa.gov>  
**Subject:** Signed - Ozone Extension Withdrawal

A Federal Register notice announcing a withdrawal of the 1-year extension of the deadline for promulgating initial area designations for the ozone national ambient air quality standards was signed today. A copy of the signed notice is attached. Please let me know if you have any questions.

Thanks,

Kristien

Kristien Knapp

Special Assistant (OAR, OITA, OGC, OP)

Office of the Administrator

(202) 564-3277

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR PART 81**

**[EPA-HQ-OAR-2017-0223; FRL- ]**

**Withdrawal of Extension of Deadline for Promulgating Designations for the 2015 Ozone National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of extension of deadline for promulgating designations.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing that it is withdrawing the 1-year extension of the deadline for promulgating initial area designations for the ozone national ambient air quality standards (NAAQS) that were promulgated in October 2015. Thus, unless and until the Administrator takes additional final action, the 2-year deadline for promulgating designations provided in the Clean Air Act (CAA) applies.

**DATES:** The deadline for the EPA to promulgate initial designations for the 2015 ozone NAAQS is October 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding this action, contact Carla Oldham, Air Quality Planning Division, Office of Air Quality Planning and Standards, Mail Code C539-04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-3347; email address: [oldham.carla@epa.gov](mailto:oldham.carla@epa.gov)

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

Entities potentially affected by this action include state, local and tribal governments that would participate in the initial area designation process for the 2015 ozone standards.